APPEAL NO. 950420

A contested case hearing (CCH) was originally held in (city), Texas, on August 30, 1994, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), with (hearing officer 1) presiding as hearing officer and with (hearing officer 2) issuing a decision after listening to the tapes of the CCH and reviewing the exhibits admitted at the CCH. In Texas Workers' Compensation Commission Appeal No. 941571, decided January 6, 1995, the Appeals Panel reversed the decision of the hearing officer because hearing officer 2 was not present to hear the testimony and observe the witness and remanded for a new hearing so that a decision could be rendered by a hearing officer who was able to judge the credibility of testimony presented. (hearing officer 3) held another CCH on February 8, 1995, and rendered a decision on February 13, 1995. The two issues at the hearing were: (1) is the appellant's (claimant) compensable injury a producing cause of her seizure disorder, posttraumatic headaches, temporomandibular joint (TMJ) and/or vestibular disorder; and (2) what is the claimant's impairment rating (IR). Hearing officer 3 determined that the claimant did not strike her head when she slipped and fell in the course and scope of her employment on (date of injury); that the claimant's compensable injury on (date of injury), is a producing cause of her TMJ and her vestibular disorder; that the claimant's compensable injury on (date of injury), is not a producing cause of her seizure disorder or her posttraumatic headaches; and that the claimant's IR is 17% as certified by (Dr. G), the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appealed urging that the determination of the hearing officer that the compensable injury is not a producing cause of the claimant's seizure disorder or her posttraumatic headaches is against the great weight and preponderance of the evidence and that the great weight of the other medical evidence is contrary to the report of the designated doctor and requests that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's seizure disorder and postconcussion symptoms are part of her compensable injury and that the claimant's IR is 25% as assigned by (Dr. A). The respondent (carrier) replies urging that the determinations of the hearing officer are supported by sufficient evidence and requesting that we affirm her decision.

DECISION

We affirm.

The claimant began working as a security guard for the employer in April 1991. She testified that on (date of injury), she slipped and fell on a muddy sidewalk while making security checks during a rainstorm. She said that she slipped, began to fall backwards, reversed her feet, and fell forward landing on her hands and knees. She said that she went to a few buildings to make security checks until she realized that things were not right because she got lost in a building. She testified that she got to where her sergeant was and that she was taken to an emergency room (ER) by emergency medical services (EMS). She said that she does not know what she may have been asked in the

ER. She testified that she had headaches in a previous job as a hairdresser because of the chemicals used; that she no longer had the headaches because she was not using the chemicals; and that when she saw a doctor on (date) , she told him about her trouble with chemicals and headaches years ago; and that the doctor told her to go to a doctor who knew her better. She said that she thinks that she went to (Dr. O), who had treated her previously, that same day. She testified that she returned to light duty on July 4, 1991, and that she worked for about four to six weeks. She said that she went to (Dr. H), a chiropractor who had treated her previously, and that he treated her three times a week. The claimant said that Dr. H referred her to Dr. A because he knew that something was going on in her head. She said that Dr. A diagnosed seizure disorder and that she had no seizures prior to the injury. She testified that the medication controlled her vertigo and dizziness prior to the injury on (date of injury); but that the medication did not control her symptoms after the injury. She said that she had inner ear surgery after the accident, but that her ear almost rotted out because the carrier delayed the surgery. She said that she had TMJ that was treated for six or eight months in 1983 and that she had no other problems with TMJ until after the injury. She testified that she was in an automobile accident on August 7, 1993, and that she was in another automobile accident about a month later, but that the automobile accidents did not cause the problems that she now has. She said that she does not know if she hit her head or not when she fell.

On cross-examination the claimant said that she was not hurt in the August 1993 accident because she saw it coming and braced her arms against the steering wheel, that she did file a claim, but that she has not been paid. She said that after the (month year) accident she went to another doctor but that Dr. H knows that she was in an accident in (month year). The claimant acknowledged going to Dr. O in 1988 and continuing to be treated by him until the end of November 1990 prior to moving to another state. When asked about some entries in Dr. O's reports she said that 1988 was a long time ago and that she does not remember much about the visits. When asked about the medication that Dr. O's reports reflect that she was prescribed by Dr. O, she said that she believed things that were in Dr. O's handwriting but that she disagrees with things that his typists type from his dictation. The claimant said that she had occasional ringing in her ears before the accident, but that she did not have dizziness before the accident. She said that she had problems before the accident, but that they were under control. She said that Dr. O told her that she had meniere's disease, but that he did not tell her that it got worse over time. She said that she never told Dr. O that she had head injuries, and that she does not know what he is referring to in his records. When asked about a note in the ER record that indicates that she did not hit her head and that she was alert and oriented, she responded that she was in shock and did not know what was going on. She said that she later told doctors that she hit her head because that is what she was told by the doctor on (date) , that day after she fell. She testified that she does not know exactly when she had the first seizure, but that it was about a year after the accident. The claimant explained that the blurred vision that she had prior to the accident is different than the blurred vision she had after the accident.

The claimant called (Mr. L), a friend, who testified that the claimant has had seizures after the accident, that she recently had a seizure during a trial against the owner of the premises where she fell, that she had a seizure about two weeks ago, and that sometimes she is not able to function for several days after having a seizure.

Both parties offered and had admitted medical records. Some of the same medical records are both claimant's and carrier's exhibits, there are duplicates and triplicates of records in a party's exhibit, and the relevance of some records is not apparent from the record. We have previously noted that this practice does not contribute to efficient dispute resolution and is discouraged. Texas Workers' Compensation Commission Appeal No. 93032, decided February 26, 1993.

The medical records of Dr. O indicate that he began treating the claimant in 1988 for a vestibular condition with symptoms of vertigo, dizziness, headaches, and tinnitus. At various times he diagnosed vasospastic disease, labyrinthine dysfunction, basilar migraine headache, and migraine equivalent with secondary right endolymphatic hydrops. In 1990 Dr. O reported that with several different types of medication that claimant's symptoms were being controlled. Dr. O reported that after the 1991 injury the claimant's medication has not controlled her symptoms. In 1992 Dr. O diagnosed the claimant's vestibular condition as posttraumatic meniere's disease.

In September 1991 Dr. H referred that claimant to Dr. A, and Dr. A treated the claimant for headaches, dizziness, and loss of concentration. Dr. A's records reflect that the claimant hit her head in the (date of injury), fall. Dr. A diagnosed posttraumatic headaches with postconcussion symptoms; posttraumatic partial complex seizure disorder; cervical radiculopathy; cervical disc disease; preexisting TMJ aggravated by the (date of injury), fall; right carpal tunnel symptoms aggravated by the fall; and persistent labyrinthine and vestibular disorder precipitated by the fall.

Dr. G, the designated doctor, reviewed the medical records of the claimant, examined the claimant, and signed a Report of Medical Evaluation (TWCC-69) with a six page narrative attached. Dr. G reported that the claimant claimed that she banged her head on the ground but did not lose consciousness. He found that her posttraumatic syndrome was unrelated to her (date of injury), injury and that she had mild TMJ that was not being treated. He assigned 10% for the vestibular dysfunction, four percent for the cervical disc disease, three percent for the carpal tunnel syndrome and used the combined values chart to assign a 17% whole body IR. He reported that no rating was given for posttraumatic seizure disorder, cervical radiculopathy, or the TMJ syndrome.

The burden of proof is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment, Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991; and the extent

of the injury, Texas Workers' Compensation Commission Appeal No. 94851, decided August 15, 1994. Where the subject of an injury is not so scientific or technical in nature as to require expert evidence, lay testimony and circumstantial evidence may suffice to establish causation. However, in cases such as the one before us, where the matter of causation is not an area of common experience, expert evidence may be essential to satisfactorily establish the link or causation between the injury and employment. Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on whether parts of the claimant's condition were caused by the accident on (date of injury), the hearing officer must look to all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer that the claimant's (date of injury), compensable injury was not a producing cause of her seizure disorder or posttraumatic headaches; we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We next address the claimant's IR. Disputes involving an IR are not uncommon. The 1989 Act sets forth a mechanism to help resolve conflicts concerning IR by according presumptive weight to the report of a doctor referred to as the designated doctor. Texas

Workers' Compensation Commission Appeal No. 92495, decided October 28, 1992. If the Commission selects the designated doctor as was done in this case, the Commission shall base its determination of the claimant's IR on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. No other doctor's report is accorded the special presumptive status given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366 decided September 10, 1992. The hearing officer resolves conflicts in expert evidence and assesses the weight to be given to expert evidence. Campos, *supra*. The hearing officer determined that the report of the designated doctor is entitled to presumptive weight and that the great weight of the other medical evidence is not contrary to the report of the designated doctor. Only were we to conclude, which we do not in this case, that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb her determinations. In re King's Estate, *supra*.

Accordingly, we affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge