

APPEAL NO. 980021

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 6, 1997, and November 18, 1997. The issues at the CCH were whether the compensable injury was a producing cause of the respondent/cross-appellant's (claimant) current condition, that is, loss of vision, bladder incontinence, severe headaches, pseudotumor cerebri, seizure disorders, and psychological problems, whether the appellant/cross-respondent (self-insured) contested compensability on or before the 60th day after being notified of the loss of vision, bladder incontinence, severe headaches, psychiatric condition, pseudotumor cerebri and seizure disorders, and whether the self-insured specifically contested compensability on the issue of liability pursuant to the Section 409.022; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6). The hearing officer determined that the compensable injury is not a producing cause of the claimant's loss of vision, bladder incontinence, continuing headaches or pseudotumor cerebri condition but that the compensable injury is a producing cause of the claimant's psychological problems and that the self-insured contested compensability on or before the 60th day after being notified of the loss of vision, bladder incontinence, pseudotumor cerebri, continuing severe headaches and seizure disorders but did not contest compensability of the psychiatric problems within 60 days after being notified but did dispute causality of the current psychiatric complaints within 60 days of notice of a subsequent injury with depression. The hearing officer also determined that the self-insured did contest compensability of the issue of liability of a compensable injury.

The self-insured appeals findings of fact that the claimant was diagnosed with depression and post-traumatic stress disorder on July 11, 1993, that the self-insured received notice of the depression and post-traumatic stress disorder on December 3, 1993, from (Dr. B) in a report dated November 29, 1993, and that the medical evidence does not support that the sole cause of claimant's depression after February 1994 was the subsequent fall. Carrier also appeals conclusions of law that the compensable injuries were a producing cause of the psychological problems and that it did not contest psychiatric problems within 60 days. The claimant appeals the hearing officer's determinations that the compensable injury is not a producing cause of the claimant's loss of vision, bladder incontinence, continuing headaches, and pseudotumor cerebri, that the self-insured timely contested the severe headaches, pseudotumor cerebri, and seizure disorders, and that the self-insured specifically contested compensability on the issue of liability pursuant to Rule 124.6. Claimant also complains that the hearing officer did not make a finding on claimant's seizure disorder. Both self-insured and claimant responded to the other's appeal and essentially urge affirmance of the hearing officer's rulings favorable to the particular party. Self-insured also urges that the Decision and Order of the hearing officer makes clear in the discussion of the seizure disorder that the hearing officer determined that any seizure disorder was not related to the compensable injury and the finding can be inferred.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in this case and is adopted for purposes of this review. There are voluminous medical records in evidence and testimony from several doctors and the claimant which will be very briefly summarized here. The claimant, the head nurse in employer's emergency room (ER), was struck in the head by an unruly patient on _____. She was examined and treated immediately, the medical records of which indicated no loss of consciousness but that the claimant saw halos and had a headache. She was taken off work for two days. The claimant testified that she did lose consciousness, that she saw bright lights, spun around and hit the floor. She also stated that they did a CAT Scan which did not show any new damage. She returned to the ER several days later because of a mass in her abdomen and x-ray showed that a shunt that had been implanted was broken. She was hospitalized and the records of July 31, 1993, indicate a final diagnosis that included "depression secondary to post-traumatic stress syndrome."

Back in 1985, claimant was diagnosed with a condition known as pseudotumor cerebri (imbalance of the spinal fluid that cushions the brain) which resulted in brain surgery and implanting of a shunt to drain the fluid into the abdomen. The claimant testified and medical records and testimony support that over the ensuing years, the claimant underwent some 14 shunt revisions because of various failures in the shunt. Records indicate a shunt revision in March 1993 and other treatment for the condition in January 1993. Apparently, these medical problems were claimed and covered under her group health coverage. (Dr. J), one of claimant's treating doctors, indicated that some pseudotumor is associated with obesity, that the claimant had lost weight prior to the incident of _____, that the condition had been under control until the shunt broke, and that in reasonable medical probability, the pseudotumor cerebri was aggravated by the _____, incident when the shunt broke. He stated that although it was difficult to say whether claimant's seizures increased after the incident, they were under control and are now more difficult to control and that the claimant is severely depressed. He did not have an opinion regarding any vision loss or bladder problems.

(Dr. R), who has been treating the claimant since 1985, stated that pseudotumor cerebri places increased pressure in the brain causing headaches and blindness and that the claimant's condition continues regardless of anything else. He testified that there had been many surgeries and malfunctioning of the shunt since 1985. He stated regarding whether the incident of _____, aggravated the pseudotumor cerebri that it was a "fine medical point" and that the condition was not aggravated by the _____, incident although, if the shunt broke as a result of the incident causing a loss of control of the spinal fluid and the condition became symptomatic again, it could be an aggravation of the condition. He did not have an opinion on the bladder condition, on how the claimant's seizure disorders were affected and indicated that vision changes are a natural sequelae from pseudotumor cerebri. He also stated that he had some disagreement with Dr. B, a carrier selected doctor, who rendered a report on the claimant. Dr. R referred the claimant

to another doctor, (Dr. BA), for treatment of depression. An April 8, 1994, letter from Dr. BA indicates that he consulted with the claimant in September 1993 and subsequently treated her with psychotherapy and antidepressant medications. In his letter, he also refers to a desperate call from the claimant in February 1994, in which she relayed that she had been about ready to return to work when she fell and injured her knee and was told she would need a knee replacement. Dr. BA stated she was very depressed and he started her on Prozac.

Dr. B testified that he reviewed the medical records and examined the claimant in 1993. He stated the shunt revisions after _____, were the same as before that date and that in reasonable medical probability, the conditions set out in the issues at this CCH did not have anything to do with the _____, incident, that the claimant was properly treated following the incident, she got better, and that the current conditions are the normal process of her disease whether the 1993 incident occurred or not. He also testified that the claimant did not have post-traumatic stress disorder. A report dated November 29, 1993, from Dr. B to the carrier outlines the incident and subsequent treatment and states that the claimant got very depressed and was seen by Dr. BA, who indicated post-traumatic stress and placed the claimant on Zoloft and later on Paxil. This was received by the self-insured on December 3, 1993. The self-insured's dispute of the psychiatric/ psychological conditions was filed on April 18, 1994, and asserts that the "current psychiatric problems relate to the knee injury from the unrelated fall."

The employer's risk manager testified that at the end of December 1993, the employer was changing group health coverage and the claimant came in to sign the necessary paperwork to make the change. The claimant told this person that she was getting ready to be released to work. Claimant claims she only indicated she wanted to return to work but had not been released.

The self-insured did not initially dispute compensability of the injury resulting from the incident of _____, but did subsequently dispute the various conditions now at issue. The hearing officer determined that regarding the depression, the dispute was untimely since the self-insured was on notice of the depression injury resulting from the _____, injury not later than December 3, 1993, and did not contest until April 1994, but was timely regarding contesting the other conditions once aware the condition was being claimed as a part of the compensable injury.

Clearly, there was considerable conflict in the testimony and the voluminous medical records placed in evidence. The hearing officer considered all the evidence, resolved the conflicts, and determined that the compensable injury is not a producing cause of the claimant's loss of vision, bladder incontinence, continuing headaches or pseudotumor cerebri condition but is a producing cause of the claimant's psychological problems. As she states, she concluded that pseudotumor cerebri is a debilitating disease, likely related to weight, which can result in severe reactions including those conditions at issue and that although a shunt may have been broken in the incident, that matter was repaired and the pseudotumor cerebri remained the same and the conditions were a sequelae. It is

apparent she found the medical records to support and the testimony of Dr. B to be convincing that the conditions now claimed, other than depression, were not part of or a result of the compensable injury. Resolving conflicts and inconsistencies in the evidence and testimony is the function of the hearing officer. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is so regarding medical evidence and expert medical opinion. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We do not conclude from our review of the evidence that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

While the carrier urges that claimant's depression resulted only from the knee injury fall, and there is evidence to show that her depression was exacerbated by or became much greater after the fall, the hearing officer found that the compensable injury was also a cause of the depression. This finds support in the medical records and evidence from Dr. R and Dr. BA, who diagnosed and treated the claimant for depression following the _____, incident and before the fall. We find nothing inconsistent in the hearing officer's findings on this issue. It is apparent she found that both the _____, incident and the subsequent fall causally related to the claimant's depression/psychiatric condition, and may even believe the fall to be the greater contributor, but was not convinced that the fall was the sole cause. Texas Workers' Compensation Commission Appeal No. 952061, decided January 22, 1996. We find that there is sufficient evidence to support the hearing officer's determination that the compensable injury of _____, was a producing cause of the claimant's depression/psychological condition and affirm the finding and conclusion on this issue.

While the hearing officer inadvertently did not make a specific finding in her findings of fact or conclusions of law as a part of her determinations on the several conditions the claimant asserts results from the incident of _____, it is clear from her Decision and Order and her discussion of the matter that she did not find any causal connection. She specifically states, after citing medical evidence in the record: "In sum, claimant did not establish the seizures were related to the compensable injury nor was there sufficient medical to alert the [self-insured] that they may be related until the designated doctor's report of June 1997." We infer from this that the hearing officer did find, although not specifically list in the findings of fact, that the seizures were not related to the compensable injury of _____. Texas Workers' Compensation Commission Appeal No. 93265, decided May 20, 1993; Texas Workers' Compensation Commission Appeal No. 92692, decided February 12, 1993.

For the reasons stated, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge