

APPEAL NO. 980195
FILED MARCH 3, 1998

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. '§ 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 5, 1998, with hearing officer. The appellant (carrier) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____. The hearing officer determined that the carrier did not waive the right to contest compensability of the claimant's high blood pressure and that the claimant's compensable injury is a producing cause of her high blood pressure. The carrier appealed the determination that the claimant's compensable injury is a producing cause of her high blood pressure, urging that that determination is not supported by sufficient medical evidence and requesting that the Appeals Panel reverse that determination of the hearing officer and render a decision that the claimant's high blood pressure is not part of the compensable injury. The claimant responded, urging that the evidence is sufficient to support the determination that her compensable injury is a producing cause of her high blood pressure and requesting that that determination be affirmed. The claimant also stated in her appeal that the hearing officer erred in determining that the carrier did not waive the right to contest the compensability of her high blood pressure. The decision of the hearing officer was mailed on January 13, 1998, and the last day for a party to appeal the decision of the hearing officer was February 2, 1998. The claimant's response is dated February 5, 1998; was mailed on February 5, 1998; was timely filed as a response; but was not timely filed to be considered an appeal. The determination that the carrier did not waive the right to contest compensability of the claimant's high blood pressure was not timely appealed and has become final under the provisions of Section 410.169.

DECISION

We affirm.

Both parties introduced exhibits, but there was no testimony at the hearing. The carrier introduced medical records to show the claimant's blood pressure prior to the compensable injury. Records from (Dr. P), the claimant's treating doctor, indicate that her blood pressure fluxuated and sample readings include 140/90 in 1978, 102/68 in 1979, 150/80 in 1982, 135/90 in 1987, 152/100 in 1989, 138/90 and 128/88 in 1990, 110/90 and 125/90 in 1991, and 120/80 and 110/75 in 1992. In response to questions from the third party administrator handling the claim, Dr. P stated that the claimant first started having high blood pressure on March 29, 1993; that he has treated her high blood pressure since then; that her high blood pressure is a direct result of the compensable injury; and that recent readings were 129/98, 140/90, 140/100, and 170/100. In a letter dated March 27, 1997, Dr. P stated that blood pressure readings are generally elevated as a result of pain, that the claimant has consistently complained of back pain, and that her blood pressure readings are going to be elevated as a result of the pain. In a letter dated February 12, 1996, (Dr. M) stated that the claimant continued to have blood pressure elevation which

was likely associated with the discomfort she continued to have. In a letter dated May 1, 1996, (Dr. F) said that it is certainly a well recognized fact that pain will increase blood pressure. In a report dated April 1, 1996, (Dr. T) stated that he had been asked by the carrier to render a second opinion to establish the etiology of the claimant elevated blood pressure, that he reviewed the claimant's medical records, that review of Dr. P's notes confirms a very clear-cut pattern of normal blood pressure from 1986 until her back injury in early 1993, that her blood pressure has been elevated since that time, and that it is his opinion there is a causal relationship between the claimant's constant pain from her injury and her elevated blood pressure readings.

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). In her Decision and Order, the hearing officer said that four doctors stated pain will increase blood pressure and that all of the medical evidence presented causally linked the claimant's high blood pressure problems to the compensable injury. She also said that there was some medical evidence regarding a potentially pre-existing problem, but that there was no indication that any treatment was required prior to the date of the injury. The hearing officer made six findings of fact concerning the cause of the claimant's high blood pressure and concluded that the claimant's compensable injury is a producing cause of her high blood pressure. Those determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. 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, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge