

APPEAL NO. 040259
FILED MARCH 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 4, 2003, and continued with the record closing on January 15, 2004. The hearing officer determined that the respondent's (claimant) compensable lumbar injury of _____, extends to and includes a compensable injury in the form of depression. The appellant (carrier) appealed the hearing officer's determination based on sufficiency of the evidence grounds and asserts that the medical reports supporting the claimant's contentions were based on an inaccurate history. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable lumbar injury on _____. It is undisputed that the claimant's compensable injury of _____, does not extend to and include an injury to the neck, Barrett's esophagus, and bipolar disorder, as these conditions are not related to the compensable injury according to the claimant. The claimant testified that he sustained a low back injury when he was hit with a pipe on _____. In dispute is whether the claimant began to suffer from depression when he was notified that he was terminated from his employment on June 20, 2002, or whether the depression was due to the ongoing back pain from the compensable injury. The claimant offered medical evidence to support his contention from various medical providers. The carrier contends that the claimant had psychological problems prior to his injury of _____, and that he did not establish that his depression was related to his compensable lumbar injury of _____.

There was conflicting evidence on the issue of whether the compensable injury included depression. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel observed in Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996, that the fact that there may be more than one cause of the claimant's psychological condition does not preclude a finding of compensability, provided that there is a causal connection between the compensable injury and the claimant's psychological problems. The hearing officer was persuaded by the medical evidence that the claimant suffered from depression that related to the back injury of _____. The hearing officer specifically found that the claimant's depression was directly caused, indirectly caused, or naturally

resulted from the compensable lumbar injury of _____. Nothing in our review of the record reveals that the extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986).

The claimant states that he is requesting that the Appeals Panel order the carrier to “pay mileage, [doctors’] bills, [prescriptions], and wages for the _____ compensable injury,” and that he also has “nerve damage that hasn’t been addressed yet as well as the incontinence that hasn’t been addressed as well.” We refer the claimant to the last paragraph of the Decision and Order that reflects that the hearing officer ordered the carrier “to pay medical and income benefits for the compensable injury of _____, that extends to and includes a compensable injury in the form of depression,” in accordance with 1989 Act. With regard to the other issues of mileage, wages, nerve damage, and incontinence, review of the record reflects that these issues were not before the hearing officer and the Appeals Panel does not consider issues raised for the first time on appeal. See Texas Workers' Compensation Commission Appeal No. 91057, decided December 2, 1991.

The hearing officer’s decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge