APPEAL NO. 92342

On June 5, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that (claimant), the respondent, had sustained an occupational disease due to chemical exposure while employed as a maintenance mechanic for a carpet padding manufacturer, (employer). She determined that the date of injury, for purposes of workers' compensation benefits, was (date of injury), the last day of work for respondent.

The appellant asks that the decision be reviewed and reversed, arguing that there is insufficient evidence supporting the determinations of the hearing officer, and that such determinations are against the great weight and preponderance of the evidence. Specifically, the appellant disputes the hearing officer's findings that (date of injury), is the date of injury; that the respondent's employment caused increased degree of toxic exposure to certain chemicals, greater than the general public; that such exposure caused the respondent to sustain acquired neurotoxicity, and aggravated his preexisting conditions; that respondent sustained a compensable occupational disease; and that he sustained his burden of proof showing that it was medically probable that neurotoxicity was connected to his employment. Respondent replies that there is sufficient evidence to support the findings and conclusions of the hearing officer.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

We will briefly summarize the evidence. Respondent had worked for the employer for the past six years. He stated that the company manufactured carpet padding by bonding pieces of foam together with adhesive. The chemicals that he stated were used in this process were MDI, toluene diisocyanate, polyoil, and cyclolube. He stated that part of his job consisted of cleaning out chemical residue from pumps and lines that were used in the process. He stated that while the company had temporarily used a chemical bath to accomplish this, for the most part, the cleaning was done by burning out the residue with a torch. On his last day of work, (date of injury), he stated that he performed this operation, which gave off a green gas. He stated that although respirators were available, they were generally used only during inspections. The vapor given off during this operation made his chest feel tight, and made him feel nauseous. Respondent testified that there were usually strong fumes in the work place. His wife testified that he would come home with "slime" in his beard and hair, and would smell of fumes.

Both respondent and his wife testified that he had undergone a personality change over the last two to three years, experienced gastrointestinal problems, acne, headaches, and diarrhea, and had become significantly more forgetful, depressed, and temperamental. Respondent checked into a psychiatric hospital on (date) while experiencing several of these symptoms. Respondent testified that he did not, however, experience bronchitis or asthma. Testimony, medical records, and psychological counselling records indicate that

respondent had diabetes, that he may not have always been compliant with dietary restrictions imposed upon him as a result of diabetes, that he had occasionally used methamphetamine, that he was depressed over the death of his father in childhood, that he had outbursts of temper throughout his life, and that he had recurrent marital problems with his wife during their 15 year marriage. Neither respondent nor his wife denied this, (with the exception of noncompliance with his diabetes diet), but stated that such problems became significantly worse over the past three years.

There is medical testimony on both sides of the issue. Respondent was treated by (Dr. C), D.O., (Dr. N), D.O., (Dr. CR), D.O., Psychologist (Dr. D), and (Dr. S), M.D. Dr. S conducted a single photon emission computed tomography (SPECT) analysis of the respondent's brain and notes physical abnormalities which he concludes show a pattern "associated with the affect of neurotoxic substances on the brain." Drs. C, D, and CR drew similar conclusions. Dr. CR stated that respondent had organic brain syndrome as a result of chemical exposure. Dr. N notes that an MRI scan of respondent's brain is normal. There was evidence of a greater than average amount of Trimethylbenzene in respondent's blood. Antibodies to isocyanate in respondent's system on February 3, 1992 were at the very top of the normal expected range.

The appellant produced records from a branch of the Texas Department of Mental Health and Mental Retardation showing that, for a few months prior to (date of injury), respondent sought counselling for some of the symptoms and feelings that he related to his toxic exposure. Appellant produced consultative statements from a professor of psychiatry, (Dr. DC), M.D., and a medical consultant in internal medicine, (Dr. B), M.D., who reviewed respondent's medical records and stated that his problems were not related to chemical exposure but most likely stemmed from diabetes, increased levels of triglycerides, and life long psychological problems. Dr. DC did state that some of respondent's symptoms were experienced by persons with organic brain syndrome, although he believed that this was not the case with respondent. Dr. DC pointed out many disagreements with the conclusions of respondent's doctors. Dr. B did this also, but stated with reference to contended job-related toxic exposure that "I cannot absolutely exclude this possibility, any more than it can be absolutely confirmed." His letter closes with a similar statement. Dr. DC opines that respondent's abnormal SPECT scan, showing narrowing of blood vessels, likely relates to his elevated triglycerides; Dr. B notes that there is opinion that such patterns could be caused by drug use, although he makes clear the absence of published, peer-reviewed data that would specifically associate such scan abnormalities with any chemical or drug.

Information about the chemicals to which respondent was exposed on the job indicate that inhalation of all substances may produce lung-related side effects, breathing disorders, and damage. Some can produce skin eruptions on contact. The information sheet related to toluene diisocyanate indicates that gastrointestinal distress and neurologic disorders can be a side effect. One can conclude from reading all of the information that prolonged, unprotected contact with any of the chemicals is not essentially a desirable status.

The disease at hand, neurotoxicity, falls within the scope of the definition of an "occupational disease." Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. Art. 8308-1.03(36) (Vernon's Supp. 1992) (1989 Act). Article 8308-4.14 of the Act states that the date of injury of an occupational disease is "the date on which the employee knew or should have known that the disease may be related to the employment." Appellant's attorney stated that notice of injury was not in issue in the hearing. Nevertheless, respondent's attorney, at the beginning of the hearing, stated that his client first knew the disease was related to employment sometime in January, but no sworn testimony was subsequently developed on this point. It was respondent's uncontroverted testimony that his last date of work was (date of injury), during which an incident occurred, similar to prior incidents, that finally caused him to leave work. Appellant has offered no evidence to support an alternative date, nor is the nature of its dispute about the date made clear. There is sufficient evidence from which the hearing officer could conclude that the last injurious exposure to the occupational hazards is also, for purposes of the Article 8308-4.14, the date that the respondent knew or should have known that his symptoms related to employment, and thus, the starting date for payment of benefits. While we believe that the hearing officer's finding of fact that respondent "contracted" an occupational disease on (date of injury) is poorly worded, we believe that other findings of fact make clear that the hearing officer found that the disease developed over a period of time.

Where the matter of causation of an illness or injury is not in an area of common experience, expert or scientific evidence may be essential to satisfactorily establish the link or causation between the employment and the injury. *See* Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). When expert medical opinion is presented to draw a connection between conditions arising out of employment and an injury or disease, that medical opinion must establish that an injury is linked to employment as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1990). In Hernandez v. Texas Employers' Insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ), the court noted that lay testimony as to onset of asthma, coupled with testimony about the conditions at the work place, was insufficient to establish that an injury occurred in the course and scope of employment, noting that expert testimony was generally necessary where the claimed injury is a disease. Id, at p. 253.

In this case, we believe that the contention that one has been injured by toxic substances by neurotoxicity does not fall within the category of common experience such that the compensability of appellant's injury can be established through lay testimony alone. *See* Texas Workers' Compensation Commission Appeal No. 92187 (Docket No. redacted) decided June 29, 1992. In this case, respondent presented records of several physicians who were supportive of his contention, and were not equivocal in connecting the observed abnormal SPECT scan, as well as his symptoms, to exposure to chemicals at the work place. Dr. CR, Dr. C, Dr. S, and Dr. D all recite the elements of their conclusions, based

on examination and testing of the respondent. Further, information produced by the manufacturer of toluene diisocyanate lists neurological disorders as a side effect of inhalation, and indicates that effects from inhalation may be delayed.

The appellant's consultants, Dr. B and Dr. DC, rebut the analyses and testing done by respondent's doctors. While they have formulated conclusions based upon review of respondent's records, and not examination, both opinions are authoritative and cogent. However, the hearing officer is the trier of fact (Article 8308-6.34(e)), and the decision of the hearing officer will not be set aside because different inferences could be drawn from the evidence on review, and different weight assigned by another trier of fact, even when the record contains evidence supportive of inconsistent inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In reviewing a point of "insufficient evidence," if the record considered as a whole reflects probative evidence supporting the decision of the trier of fact, we will overrule a point of error based upon insufficiency of evidence. Highlands Insurance Co. v. Youngblood, 820 S.W.2d 242 (Tex. App.-Beaumont 1991, writ denied). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Any conflict among medical witnesses is a matter to be resolved by the trier of fact. Highlands Underwriters Insurance Co. v. Carabajal, 503 S.W.2d 336 (Tex. Civ. App.- Corpus Christi 1973, no writ).

There being sufficient evidence to support the decision of the hearing officer, we affirm.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Philip F. O'Neill
Appeals Judge