APPEAL NO. 92356

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On June 29, 1992, (hearing officer) presided at a contested case hearing in (city), Texas, and determined that claimant, appellant herein, did not establish that Bell's Palsy was caused by his work. She also found that appellant did not timely notify his employer of an on-the-job injury. Appellant takes issue with the decision saying he did become sick on the job and did give adequate notice.

DECISION

Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

Appellant is 69 years old and had worked part-time as a grocery sacker at (employer) for about a month when, on (date of injury), he left work with a sudden onset of what was diagnosed as Bell's Palsy. (According to Dorland's Illustrated Medical Dictionary, 27th Edition, Bell's Palsy is a unilateral facial paralysis of sudden onset.) The weather was wet and cold that day. Appellant complained of an earache, blurred vision in his right eye, a problem speaking, and unnoticed nasal drainage. The right side of his face became twisted. He complained that he was not furnished a raincoat as he should have been. (BP), customer service manager at that time, testified that the store had sufficient raincoats and did not know why appellant did not have one. There is no dispute that appellant went home early on that day because he got sick. BP stated that he did not recall appellant telling him that his sickness was associated with the job. Appellant said that he told BP that he was wet and cold, had developed an earache in the parking lot, did not feel good, and needed to see a doctor. Appellant has not worked since that time and continues to have residual problems.

An occupational disease does not include an ordinary disease of life to which the public is exposed outside of employment. *See* Article 8308-1.03(36) of the 1989 Act. Bewley v. TEIA, 568 S.W.2d 208 (Tex. Civ. App.-Waco 1978, writ ref'd n.r.e.), held that a worker who caught a cold which developed into pneumonia from working in a tent during a tent sale could not recover workers' compensation. Her cold developed in August when the temperature inside the tent was over 110° and torrential rains allowed water to accumulate inside the tent to a depth over her feet. In addition she was given no raingear and had to walk to and from the store to the tent. *Compare with* TEIA v. Moyers, 69 S.W.2d 777 (Tex. Civ. App.-Texarkana 1934, writ dismissed) and Commercial Standard Ins. Co. v. Allred, 413 S.W.2d 910 (Tx. 1967) which found that heat exhaustion either from working between two metal buildings that reflected the heat or from working with a cutting torch was compensable. The court in both said that the employee's duties subjected him to a greater hazard from an Act of God than ordinarily applied to the general public.

Appellant adamantly contends that the sickness should be compensable under

workers' compensation because he got sick on the job. He provided medical records which show the diagnosis but provide little basis for making a causal connection. The strongest medical statement was made by (Dr. D) who said:

> Can not determine whether Bell's Palsy was caused by work situation. By result of history can only relate that it is possible. Texts do not relate this as causal for Bell's Palsy.

Appellant himself, in referring to the medical documents and the Bell's Palsy, said, "no doctor knows the cause of it."

In a leading Texas case where an employee worked for four years moving radioactive material, his cancer of a lymph gland was not found to be caused by the work. Parker v. Employers Mut. Liability Ins. Co. of Wis., 440 S.W.2d 43 (Tex. 1969). That court said causation can be shown when general experience or common sense enable people to tell that one event is followed by another. When there is insufficient knowledge in an area to allow the above, such as in some areas of disease, expert medical opinion can be used to show the cause. In Parker, the doctors said that cancer "could have been caused" by radiation, but there was no way to determine the cause. This testimony just raised a "possibility" of causation. The court said "a possible cause only becomes `probable' when in the absence of other reasonable causal explanations it becomes more likely than not that the injury was a result of its action."

While it is true that other cases have held that the word "possible," together with other evidence provided, may support a finding of probable cause (*See* Ins. Co. of North America v. Kneten, 440 S.W.2d 52 [Tex 1969]), the hearing officer did not find that situation to be present in this case. The medical evidence provided did not compel her to make a finding that the work caused the disease. The Appeals Panel, in agreeing that hepatitis was not shown to be caused by the job in Texas Workers' Compensation Commission Appeal No. 92093 (Docket No. redacted) decided April 24, 1992, cited Texas Workers' Compensation Commission Appeal No 91113 (Docket No. redacted) decided January 27, 1992, which said "what is required is evidence of probative force of a causal connection between the employment and occupational disease."

The hearing officer, as the trier of fact, is the sole judge of the weight and credibility of the evidence. She could believe BP when he said appellant told him about his sickness but did not relate it to the job; she could find that notice was not timely. No evidence was submitted that job conditions caused Bell's Palsy. The "possibility" raised was correctly considered to be insufficient to show a connection. While general medical data from "The Complete Medical Guide," offered by appellant, did state that a draft on one nerve could cause a temporary paralysis, no medical opinion states that appellant's palsy is temporary, that a draft caused it, or that the palsy developed immediately after a draft at work as opposed to after a period of time, which could place exposure somewhere else. Appellant's own doctor's statement, discussed previously, does not help appellant when it says, "(t)exts

do not relate this as causal for Bell's Palsy." "This" in the quoted sentence referred to appellant's history, which included the exposure to wet and cold weather. Since the appellant has the responsibility to show the causal connection in order to recover workers' compensation benefits, he has not met his burden in this case. While a connection may appear to be apparent, only showing that symptoms of a sickness began while at work does not provide the basis for recovery of benefits under workers' compensation.

The findings of fact and conclusions of law are sufficiently supported by evidence of record. Since the decision is not against the great weight and preponderance of the evidence, we affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Philip F. O'Neill
Appeals Judge