APPEAL NO. 92413

A contested case hearing was held in (city), Texas, on July 22, 1992, (hearing officer) presiding, to consider whether appellant's pneumonia constituted an injury in the course and scope of his employment. Finding that the medical tests did not indicate that appellant's viral pneumonia was caused by any specific exposure or other event traceable to his groundskeeper position with the (employer), the hearing officer concluded appellant was not injured in the course and scope of his employment pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Appellant has filed a request for review which, in essence, challenges the sufficiency of the evidence to support the hearing officer's conclusion. Respondent urges our affirmance.

DECISION

Finding sufficient evidence to support the hearing officer's findings and conclusion, we affirm.

Appellant testified that he had worked for employer for about nine years as a groundskeeper and spent most of his time working on the golf courses. When he began work on (date of injury), the weather was dry and appellant mowed golf course greens for about two hours and fairways for another hour when the temperature suddenly dropped and it began to rain. Appellant said he drove the tractor to the shed but was exposed to the cold and rain for approximately 10 minutes and got soaked because he wasn't wearing a rain coat. In the shed, he felt ill and experienced sudden chest pains. He was driven to a hospital emergency room where he was diagnosed with acute pneumonia. After several days of ineffective attempts to drain his lower left lung lobe, appellant underwent a thoracotomy for decortication and drainage. He was later operated on twice more to suture a blood vessel and to remove thrombi clogging the chest drain. He was discharged on April 10th and returned to his same job with employer on June 20th. He said "the doctor" told him he "probably could have caught it because of the bad weather [he was] exposed to," and as for the use of chemical fertilizers on the greens, "it could be because of that." He said he had not applied chemicals on but had done so a week earlier. He did not, however, identify such chemicals, nor testify to the manner in which he applied them and to whether he inhaled or otherwise came into contact with them. He denied any family history of pneumonia, living with a pneumonia patient, handling chemicals at home, or living near a factory.

Respondent's safety director, (Mr. C), testified that he saw appellant almost every work day for about one month prior to his illness and was unaware of any physical complaints of appellant; that there had been no rain in (month) until the (date) when it rained one-half inch; and, that employer has a person who is certified and trained to handle and store the chemicals.

Appellant introduced his medical records from the hospital, as well as his post-hospital follow-up visits with (Dr. S). who practices pulmonary medicine and who followed

appellant in the hospital. The only medical record which adverted to the causation of appellant's pneumonia was the cardiology consultation report of (Dr. G). (Dr. G), agreeing with the diagnosis of left lower lobe pneumonia, wrote that he suspected "community acquired Strep etiology." The Notice of Refused/ Disputed Claim (TWCC-21) prepared by (Mr. C) on (date) disputed appellant's claim contending it was not a compensable injury because "pneumonia is considered to be an ordinary disease of life." (Dr. S) wrote a letter to (Mr. C) on April 19th in which he stated that "[a]lthough no one could say for certain, it is most likely that [appellant's] pneumonia was acquired or possibly precipitated by exposure to cold and rainy weather while performing duties at your club."

Appellant testified he agreed to see (Dr. W), a pulmonary medicine practitioner, at respondent's request. (Dr. W's) letter of May 4, 1992 stated the following opinion:

> It is my opinion, that [appellant's] pneumonia was in no way related to his employment or the weather conditions in which he was working. It is quite clear, that exposure to cold or damp weather does not induce pneumonia. This has been proven time and time again in army recruits.

Article 8308-3.01 makes an insurance carrier liable for an employee's injury if the injury arises out of and in the course and scope of employment. The 1989 Act defines injury to mean damage or harm to the physical structure of the body and those diseases or infections which naturally result from the damage or harm. Article 8308-1.03(27). Occupational disease is defined to mean a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. It includes other diseases or infections that naturally result from the work-related disease, but "does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Article 8308-1.03(36).

According to the Benefit Review Conference report, appellant's position there was that his pneumonia was caused by his exposure to cold, rainy weather at work. At the outset of the hearing below, appellant was asked by the hearing officer whether that was still his position and he responded that it was. Respondent maintained its position was that appellant's pneumonia was an ordinary disease of life. In his opening statement appellant asserted he would prove that his pneumonia was caused by his exposure to "particularly poor working conditions." In his closing statement, appellant seemed to broaden his causation theory arguing that appellant had been "exposed to a high level of chemicals and fertilizers and other things . . . that are known to induce respiratory-like symptoms," and then was exposed to "a cold drenching rain and soaking," and suggested that it was this combination of conditions that induced his pneumonia.

The court in INA of Texas v. Adams, 793 S.W.2d 265, 267 (Tex. App.-Beaumont 1990, no writ) said that "[o]rdinary diseases of life to which the general public is exposed outside the employment are not compensable except where incident to an occupational disease or injury. . . . To establish an occupational disease, there must be probative

evidence of a causal connection between the claimant's employment and the disease, *i.e.*, the disease is indigenous thereto or present in an increased degree. (Citation omitted.)" Appellant had the burden of proving a causal connection between his pneumonia and his employment. Texas Workers' Compensation Commission Appeal No. 92378 (Docket No. redacted) decided September 14, 1991 (citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1981). In Texas Workers' Compensation Commission Appeal No. 91004 (Docket No. redacted) decided August 14, 1991, we stated that "[c]ausation can be found where: (1) general experience or common sense dictate that reasonable men know, or can anticipate, that an event is generally followed by another event; (2) there is a scientific generalization, a sharp categorical law which theorizes that a result is always directly traceable back to a cause; or (3) probabilities of causation articulated by scientific experts are sufficient and more than mere coincidence. (Citations omitted.)" Where the matter of causation is not in an area of common experience, expert or scientific evidence may be essential to establish the causation. Texas Workers' Compensation Commission Appeal No. 92202 (Docket No. redacted) decided July 6, 1992 (citing Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.)). We take note of Bewley v. Texas Employers Insurance Association, 568 S.W.2d 208, 210 (Tex. Civ. App.-Waco 1978, writ ref'd n.r.e.), in which the court stated that the Texas courts have uniformly held that illnesses like cold, sore throat, and pneumonia resulting solely from exposure to the elements in the course of employment are ordinary diseases of life and are to be distinguished from pneumonia and other respiratory diseases resulting from sudden, accidental inhalation of gases or other foreign substances which damage the lungs.

The hearing officer is the sole judge of the weight and credibility to be given the evidence (Article 8308-6.34(e)) and, as the fact finder, had to resolve the conflicts and inconsistencies in the evidence, including the expert medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Having reviewed all the evidence in support of and contrary to the salient findings and conclusion of the hearing officer, we are satisfied there is sufficient evidence to support them. The hearing officer could believe the opinion of (Dr. W) that appellant's pneumonia was "in no way related to his employment or the weather conditions in which he was working," as well as the observation of (Dr. G) that he suspected "community acquired Strep etiology." We may not substitute our judgment for that of the fact finder where, as here, the challenged determination is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. Texas Employers Ins. Ass'n. v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ); 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).

The decision of the hearing officer is affirmed.

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Philip F. O'Neill
Chief Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge