

## APPEAL NO. 92564

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). A contested case hearing was held on September 18, 1992, in (city), Texas. (Hearing officer) presided as the hearing officer. The issues under consideration were whether or not the claimant's injury of (date of injury), was limited to heat stroke, and whether the claimant suffered disability as a result of that injury. The hearing officer found that on the date in question the claimant suffered an injury which was limited to heat exhaustion, and that claimant's inability to obtain and retain employment at wages equivalent to the wage he earned prior to (date of injury) was not due to the continuing effects of his injury. Accordingly, the hearing officer held that the claimant take nothing in additional income benefits, but that nothing in her decision and order should be construed to adversely affect claimant's entitlement to receive medical care which may be reasonable and necessary to treat the effects of his heat exhaustion.

On appeal, the claimant argues that the hearing officer's decision is against the preponderance of the evidence, not supported by substantial evidence in the record as a whole, and contrary to the law and to the facts. He asks that the decision be reversed. The carrier in its response points to the medical evidence in the record and contends there is a lack of evidence linking claimant's physical problems to the events of (date of injury).

### DECISION

We affirm the decision and order of the hearing officer.

The claimant had been employed as a laborer with (employer), working as part of a labor pool. On (date), he was assigned to a job at the Mobil Refinery, cleaning out chemical tanks. On that date he was working with two other members of the crew who were working inside a tank while he carried and dumped buckets of sludge from the tank. The next day there were just two crew members, and he had to work inside the tank. Upon leaving the tank he said his jaw locked up, he became nauseous, and everything was blurry. He collapsed and was taken to (Hospital) in (city), where he was initially seen by (Dr. N).

Dr. N's initial medical report dated (date of injury) noted claimant's symptoms of blurry vision, cramping in his legs, and twitching of his face and arms. Dr. N ordered tests and made a discharge diagnosis of "muscle spasm--heat exhaustion vs. hyperventilation vs. both." The claimant returned to the same hospital on September 1st, complaining of a sudden onset of right side numbness, difficulty breathing, and of his back and neck not feeling right. He was discharged with a diagnosis of anxiety. On September 3rd he went to the emergency room with a severe headache. The report by (Dr. V) indicated he had earlier elected not to stay in the emergency room and keep his head down for an hour or two following a spinal tap, which had exacerbated a severe spinal headache. The notes also said claimant imbibes alcohol fairly heavily and had dehydrated himself.

On September 13th claimant was seen by (Dr. A) who stated his impression as

anxiety disorder and nonspecific complaints of dizziness, ataxia, blurred vision, disequilibrium, and low back pain. Dr. A said he would proceed with a neurologic evaluation to exclude an organic cause for claimant's complaints. He also noted that the claimant admitted to being an alcoholic in the past, but denied that he drank heavily at the current time. An October 1st EEG, brainstem evoked response study, and visual evoked response study ordered by Dr. A produced normal results. However, an October 1st electromyogram report contained the impressions of bilateral median nerve entrapment neuropathy at the wrist, compatible with carpal tunnel syndrome; cervical nerve root irritation syndrome, requiring clinical correlation; and possible multilevel root disease such as would be seen in idiopathic polyradiculopathy requiring repeat EMG evaluation in 8 to 12 weeks.

Over the next several months, Dr. A continued to see and treat the claimant for multiple complaints including tremors of the hands, low back pain, and headache. Dr. A counseled the claimant about drinking, and wrote on October 21st that "the presence of polyneuropathy is probably consistent with alcohol neuropathy." In a November 27th letter to carrier's representative, Dr. A said the claimant's overall condition was complicated by alcohol abuse and concluded, "I would not be able to explain all of these symptoms on the basis of a heat stroke." Because of claimant's continuing complaints Dr. A ordered a cervical MRI which disclosed a grade II to III herniated disk at C6-7 and C7 to T1 with a minimal grade of bulging disk at C4-5. He also referred claimant to Dr. M.Y.I. Beck for treatment of claimant's carpal tunnel syndrome.

On July 7, 1992 claimant was seen by (Dr. B) for an independent medical examination. Dr. B made the following diagnoses: 1. cervical degenerative disk disease; 2. bilateral carpal tunnel syndrome; 3. anxiety disorder; 4. alcoholism. Dr. B also wrote, ". . .it is unknown exactly what if any injury occurred on-the-job. From the history obtained by the patient, it is possible that he had a mild heat exhaustion with his description of the incident occurring on (date of injury). This history could not explain the other findings. . .The patient did not give me any history or any other specific injury which occurred on the job which would account for the other abnormal studies particular (sic) cervical degenerative disk changes and bilateral carpal tunnel syndrome."

At the hearing the claimant, who does not have a high school degree, testified that he has not worked at any job since the date of his injury. He stated that he earned \$5.00 an hour at his job, but that because he was part of a labor pool he did not necessarily work a 40-hour week. In response to the question whether he had tried to find another job, he replied, "[n]ot in my condition." He stated that prior to (date of injury) he had not experienced the physical problems he was now having, which include problems with his eyes, ears, neck, and arms; shaking of his legs; numbness in his feet; and constant back pain.

There was sufficient record evidence to support the hearing officer's findings of fact and conclusions of law in regard to the extent of claimant's injuries. The hearing officer as trier of fact is the sole judge of the relevance and materiality of the evidence offered and of

the weight and credibility to be given to the evidence. Article 8308-6.34(e). We will set aside the hearing officer's decision only where it is so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 244 S.W.2d 660 (Tex. 1951). That is not the situation here, where ample medical evidence indicated that serious and debilitating physical problems, including neck and back problems, carpal tunnel syndrome, and neuropathy, were not caused by his heat exhaustion on (date of injury).

For the same reason, we find sufficient support for the hearing officer's determination that claimant did not suffer disability as a result of the (date of injury) injury. The 1989 Act defines "disability" as "the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury." Article 8308-1.03(16). There was sufficient record evidence to support the hearing officer's finding that although claimant has been unable to obtain employment at wages equivalent to those he earned prior to (date of injury), such is not due to the continuing effects of his on-the-job injury. Based on the lack of probative evidence linking claimant's inability to earn the equivalent of his preinjury wage to his (date of injury) heat exhaustion, the hearing officer properly concluded that the claimant did not have disability.

The hearing officer's decision and order are accordingly affirmed.

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Lynda H. Nesenholtz  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge