

APPEAL NO. 92612

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 September 22, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that (decedent hereafter) did not get an occupational disease from benzene exposure in the workplace because it was not shown that his chronic myelogenous leukemia (CML) was caused by benzene. Appellants (claimants hereafter) assert that the evidence was sufficient to result in a decision in their favor. Claimants also say that certain findings of fact that deal with the relationship between benzene and CML, that say that CML and acute myelogenous leukemia (AML) are separate diseases, and that say there is virtually no evidence of benzene causation of CML are in error. Claimants stress the evidence provided by Dr. G, an expert who testified, by Dr. L, a PhD whose statement was provided, and by Dr. W whose medical records and letters were provided.

DECISION

Finding that the decision is based on sufficient evidence of record, we affirm.

The decision of the hearing officer in this case is thorough, well-reasoned, and accurately reflects the requirements of the 1989 Act in determining whether the decedent's disease was an occupational one. It is adopted with one variation and becomes a part of this opinion. For purposes of providing information to other readers and to address the assertions made on appeal, a short opinion will be added to that of the hearing officer. (This case is also noteworthy for the professional manner in which attorneys for each party conducted themselves and for the thoroughness of evidence presented by each side.)

Decedent worked as a laboratory technician for (employer) since 1971. He died on (date), of CML and blast cell transformation, after having missed only two days of work. It was not controverted that part of decedent's responsibility in the laboratory was to work with benzene. The laboratory kept records of air samples which showed exposure to benzene over a long period of time. No evidence was introduced to indicate that the reports of exposure were erroneous or taken in a manner to be unreflective of the exposure to workers in the lab, including the decedent. Evidence was provided that Occupational Safety and Health Administration (OSHA) standards for benzene in air have called for no more than 10 parts per million, while recently that standard changed to one part per million. The records showed benzene levels regularly recorded between one and 10 parts per million with some levels at 12 or even up to 20 parts per million. There was no indication that decedent was ever exposed to a very high concentration of benzene, such as was reported in regard to Turkish leather workers who washed their leather in benzene.

Dr. G testified on behalf of the decedent after reviewing various records and studies; he did not examine the decedent. He has excellent credentials as a medical doctor in the field of hematology-blood studies. He was of the opinion within reasonable medical probability that exposure to benzene in the levels set forth caused the decedent to get CML.

He referred to a report by Dr. L, PhD in toxicology, who said:

Exposure to benzene is known to damage the hematopoietic stem cells, from which all of the lines of blood cells are derived. It is also well established that damage to this progenitor cell can result in hematopoietic malignancies including acute and chronic leukemia. Chronic myelogenous leukemia represents a category of stem cell derived hematopoietic malignancies.

Dr. G agreed that experts disagreed as to whether benzene causes CML. He also agreed that studies that show a rate of leukemia among workers exposed to benzene that is three or four times that of the population in general addressed leukemia, not just the form of leukemia called CML. He stated that benzene can cause AML. He referred to several studies of benzene's relationship to leukemia. On cross-examination, he did not agree with a hematology textbook that said "[c]hemical leukemogens have not been identified as caustic agents of CML." He looked upon the leukemias as being interrelated and not rigidly compartmentalized one from the other.

Dr. N testified on behalf of the carrier. He had been the treating doctor for decedent beginning in March 1991 until the health insurance under which decedent had been treated changed its coverage to a different group of physicians--at that time Dr. N transferred decedent to Dr. W. (Dr. W wrote in his medical records that decedent's death was caused by CML and blast transformation.) Dr. N also has excellent credentials as a medical doctor in the field of hematology. He was of the opinion within reasonable medical probability that benzene did not cause decedent's CML. He pointed out that as the treating physician, he performed a chromosome test of the decedent which confirmed that decedent had CML, not AML. CML and AML are different diseases. He described how a person with CML at some point will enter an acute stage in which the new cells given off by bone marrow are immature or partially formed (blasts); the patient dies within days of this development. He asserted, however, that this acute phase of blast transformation is not the same as AML, although it appears similar. He agreed that benzene can cause AML, but maintained that benzene has not been shown to cause CML; he added that no chemical has been shown to cause CML. The only known cause of CML is radiation; he pointed to studies of nuclear explosions as making this connection. He pointed out that a recognized text on hematology indicated that there is no known association between chemicals and CML. He added that the chromosome test which is accurate for diagnosing CML was not in existence before 1960, and many studies that appear to find some relationship between benzene and CML used data acquired before that time which could have identified instances of AML erroneously as CML. He pointed out that the chemotherapy he has used for treatment of various forms of cancer can and has caused AML, but has never caused CML. (Chemotherapy often acts to kill cells as they divide on the theory that since cancer cells divide at a much higher rate than normal cells, a much greater number of cancer cells are therefore killed than are normal cells.)

Dr. L's statement about the formation of blood cells appears to indicate that damage to certain developing cells can cause CML, while Dr. N says that he has never seen damage

to cells caused by chemicals result in CML.

In answer to questions of the hearing officer, Dr. N said that he had talked to Dr. W recently at a meeting. (Dr. W in a letter to claimants' attorney had referred to decedent's history of exposure to chemicals including hydrocarbons and benzene and said "I believe for this patient that there is a serious worry that the exposure and his disease may be related.") According to Dr. N, Dr. W told him that he did not believe that benzene causes chronic leukemia. Dr. W's letter referred to exposure not limited to benzene. (As pointed out by the carrier, no other chemical or toxic substance was referred to as causative by the evidence provided on behalf of the decedent.)

As stated by the hearing officer, the studies do not contradict the opinion of Dr. N. While an argument can be made that the evidence showed more of an indication of a relationship between benzene and CML than is set forth in Finding of Fact No. 16, which says "[t]here is virtually no evidence that benzene causes [CML] in humans or that it can be triggered by exposure to any chemical, including benzene," the evidence clearly supports the determination that benzene did not cause the decedent's CML.

The hearing officer is the sole judge of the weight and credibility of the evidence, including evidence provided by medical experts. See Article 8308-6.34(e) of the 1989 Act. In Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991, a decision by the hearing officer found an occupational disease caused by lead exposure. In that case medical experts on behalf of both parties provided conflicting evidence, but the hearing officer chose to give more weight to the claimant's evidence that his disease was caused by lead. The Appeals Panel in that case found that the evidence supported the hearing officer's decision on behalf of the claimant, just as it finds in this case that the hearing officer's decision on behalf of the carrier is supported by the evidence. In Texas Workers' Compensation Commission Appeal No. 92356, decided September 6, 1992, a hearing officer was upheld in finding that the claimant did not show that Bell's Palsy was caused by effects of bad weather in part based on evidence that medical texts do not show that Bell's Palsy is caused by weather. Similarly, the Appeals Panel in one hepatitis case, Texas Workers' Compensation Commission Appeal No. 92085, decided April 16, 1992, reversed a decision that hepatitis was caused by the workplace when there was no medical opinion evidence that hepatitis was transmitted to a worker pushing used paper plates into a trash sack even if some patient who used them may have been diseased; and in another, Texas Workers' Compensation Commission Appeal No. 92093, decided April 24, 1992, the Appeals Panel agreed with the hearing officer that there was no showing of hepatitis in the workplace from which the claimant's disease could have been contacted.

The hearing officer's finding of fact that CML and AML are two separate diseases is directly supported by the testimony of Dr. N and is refuted by no documentary evidence. Finding of Fact No. 14, which addresses an observation of association between CML and benzene as credible but subject to bias and chance, is directly supported by the study in question, which makes that statement itself. See Carrier's Exhibit L, International Agency for Research on Cancer, Monographs, Volume 45, 1989, on pages including 26 and 109.

As stated previously, both parties provided medical evidence relevant to the issue under consideration from which the hearing officer as finder of fact was able to make a sound, reasoned decision. The disease, CML and its causation, was sufficiently complex to have required the medical evidence provided. See Parker v. Employers Mut. Liability Ins. Co. of Wisconsin, 440 S.W.2d 43 (Tex. 1969).

The conclusion of law that decedent did not sustain an occupational disease and the decision and order stating that benzene did not cause the decedent's CML are sufficiently supported by the evidence and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Neseholtz
Appeals Judge