APPEAL NO. 92644

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). On October 28, 1992, a contested case hearing was held in (city), Texas, (hearing officer) presiding, to determine the two disputed issues unresolved from the benefit review conference, to wit: (1) whether appellant's (claimant) gastrointestinal (GI) complaint and emotional disorders are related to an alleged chemical exposure on (date of injury); and (2) whether claimant has reached maximum medical improvement (MMI) with regard to any injury incurred on (date of injury). Based upon comprehensive and thoroughly articulated findings, the hearing officer concluded that claimant failed to prove by a preponderance of the evidence that his injuries, other than irritation to areas of skin near his hairline and his right ear, arose out of and in the course and scope of his employment on (date of injury). The hearing officer also determined that claimant had not reached MMI. Claimant challenges the sufficiency of the evidence to support the adverse determination respecting the compensability of his GI complaints and emotional disorders. The respondent (carrier) urges our affirmance.

DECISION

The evidence being sufficient to support the pertinent findings and conclusion, the hearing officer's decision is affirmed.

Claimant testified that approximately six days after commencing employment as a pipefitter for (employer) at the (plant), he and a coworker were changing a flange at the bottom of a tank, shortly before the end of the shift at around 5:00 p.m. on (date of injury). A nozzle flange was removed and when the replacement flange with a probe was inserted into the hole, some liquid splashed on claimant's face and body. He was then wearing protective goggles, a hard hat, and work clothing. He said he had been advised by the foreman that the tank had been flushed, drained, and blocked, and he understood there would be no chance of a spill. He knew the unit including the tank had been previously shut down but he was unfamiliar with the decontamination process for the unit. Claimant said he had been advised at a class approximately one week earlier that contact with cyanide would cause death within moments, that full body protection would be provided for employees working around cyanide, and that the various work orders would specify the type of protective clothing to be worn for each job. He said he did not know what chemicals were in the tank or the identity of the liquid which splashed on him but that after he was splashed, his first thought was that he was going to die because he believed what he had been told about cyanide. He said he immediately felt burns at his hairline and on his ears and within three minutes was taken to the shower. He took a long shower, his clothing was washed and returned to him, and he was seen by the plant nurse before leaving for the day. The next day when he came to work claimant said he told the nurse about the incident and that he did not feel well. He felt the liquid could not have been merely water, as he had been told, because it burned his skin at the hairline and ears, and sores developed overnight. The nurse put a cream on his face and neck. He said he asked the nurse about seeing a doctor but got no response.

Claimant further testified that on October 29th, he visited (Dr. DC). He told Dr. DC he had been exposed to "hydrocarbons" and Dr. DC treated his GI complaints. He specified hydrocarbons to Dr. DC because he wasn't sure what was in the tank, and further stated that to the date of the hearing he had yet to be advised of the nature of the liquid which spilled on him. Dr. DC referred him to (Dr. P), a clinical psychologist, who has been treating him weekly with psychotherapy and medications for his emotional disorders. Claimant expects this treatment to continue for another 18 to 24 months. Claimant said he had no history of GI or emotional disorders preceding the incident. In January 1992, claimant also began to see (Dr. E), an ophthomologist, who advised him he has chemical conjunctivitis and who is still treating his eyes. Claimant said he was also seen by (Dr. AG), an internist, and spoke on the telephone with (Dr. S), a medical toxicologist, who told him he would need to be first seen by an internist before Dr. S could get involved. This call prompted the claimant's visit to Dr. AG.

Claimant introduced an injury report by employer's nurse which reflected that on (date of injury), after claimant got the liquid splashed on his face, neck, arms, hands, shoulders, and legs, claimant showered and there was no apparent injury; that on (date), claimant reported some itching and burning sensations to his face at the hairline and ears; and that there were some papule areas at the hairline and two areas of irritated skin on his right ear which were treated with hydrocortisone cream. Claimant's evidence also included reports from Drs. DC, E, AG, P, and S. According to the report of Dr. DC, dated September 4, 1992, claimant was exposed to "hydrocarbons" on (date of injury) (as he testified he had reported to Dr. DC), the long-term medical effects of 90% of all hydrocarbons have not been documented, and claimant's symptoms resulted in a diagnosis of post-traumatic stress syndrome with a sub-diagnosis of stress induced gastritis. Dr. E's January 6, 1992 report stated that claimant was seen on January 3rd for complaint of watery, burning eyes for a period of two months, and that he has chemical conjunctivitis of both eyes "due most likely to his chemical burns which he sustained." Dr. E's report of September 10, 1992 states that claimant has chronic inflammation of his bulbar (sic), pupil conjunctiva, and is developing a pterygium of the left nasal conjunctiva. Dr. AG's August 28, 1992 report stated that claimant had the following diagnoses "related to the toxic chemical spill with injury:" gastritis and reflux esophagitis, anal rectal inflammation, mild sessile polyp, acute organic brain syndrome, post-traumatic stress disorder (PTSD), generalized anxiety disorder, chemical burn involving face, history of constitutional symptoms, and generalized recurrent headaches. The medical toxicology report of Dr. S, dated October 23, 1992, stated that, based on his review of claimant's records and various medical reports, "some degree of work-related adverse effect has occurred" because claimant apparently actually did sustain observable skin injury to some areas of his head and his PTSD diagnosis by Dr. DC appears correct. Dr. S stated that while it can be argued that "minimal classical toxicological effect expected from TBA (tertiary butylamine) can be found," claimant "clearly does have measurable psychological deficits" which are due not to direct toxicologic effect of TBA on the brain but apparently to the stress of the incident and claimant's increased susceptibility to developing such a reaction. Dr. S's assessment was a "single accidental

work-related chemical exposure (tertiary butylamine washings) resulting in localized skin irritation/burns to the head area . . . [and] post-traumatic stress syndrome."

Carrier introduced the affidavit of (Mr. S), a plant process operator, which stated he had supervised the decontamination of the involved tank, apparently a part of the TBA unit, two days before the incident on (date of injury), and that the tank was flushed with water until it was free of contaminants and the pH levels were neutral. On the day of the incident, Mr. S observed claimant and his coworker preparing to replace the flange and wearing hard hats, gloves, and chemical splash goggles. He saw them shortly after the incident and suggested they take a warm shower and put on clean coveralls as a precaution. While they were showering, Mr. S inspected the involved fluid which he said was filtered water containing no TBA contaminants. He described the water as clear and odorless, and explained the method he used to determine that it contained no abnormality including feeling the liquid with both chemical-resistant gloves and with his bare hand. According to the affidavit of (Mr. JB), employer's foreman on the job, claimant and his coworker described the incident to him shortly after it occurred and made no complaints of burning, itching, or other skin irritation. He noticed no redness nor other visible sign of skin irritation and said they appeared unconcerned over the incident. Mr. JB said it was standard operating procedure for employees, as a precaution, to take a shower and change clothing after being splashed with any substance. After the incident, plant personnel tested the fluid draining from the tank and reported to Mr. JB that is was not harmful. (Mr. CB), a plant foreman, stated in his affidavit that the TBA unit, including the tank, was shut down on October 18th for routine maintenance and before (date of injury) was decontaminated by continual washings until the waste water was pH neutral. The waste water from the final washing of the tank was tested and had a pH of 7, the pH expected for filtered water. After being notified of the splashing incident, Mr. CB went to the tank to conduct tests. The water still draining from the tank flange opening, as well as liquid downstream in the drainage ditch, tested pH neutral. Mr. CB then checked on claimant and his coworker in the emergency showers and they stated they had no stinging sensation or irritation in their eyes or on their skin. Mr. CB also tested the pH level of the fluid remaining in their coveralls which was neutral. He insisted they check in with employer's medical personnel before departing the plant.

In her affidavit, employer's nurse stated that she had received a call that the incident occurred, and that on their way out of the plant claimant and his coworker stopped at the gate where her office was located just long enough to advise her they had showered and had no residual problems. She said she questioned them in detail including questions about burning, redness, and skin irritation, and she noticed no signs of physical or emotional distress. She said she did not then perform a full physical exam because they were in a hurry to leave the plant for a birthday party. Neither asked to see a doctor and they indicated they would be back at work the next morning to finish the job. The nurse next visited with claimant and his coworker the next morning about 7:30 a.m. and claimant complained of "a moderate amount of redness" around his hairline and "a very small area of irritation" near his right ear. The coworker reported some skin itching but showed no

visible signs of skin irritation. Neither complained of headaches or eye irritation, and aside from the itching sensation neither complained of any stinging or burning sensation. She gave them hydrocortisone cream to apply to their skin.

Carrier introduced a May 1, 1992 report from (Dr. PG), a clinical psychologist, which stated he had reviewed the neuropsychological reports of Dr. P on claimant (and his coworker), found the diagnosis of organic brain syndrome questionable, and disagreed that claimant was "not capable of carrying on any type of vocational activity," and was "100% disabled." Carrier also introduced a medical toxicology report of June 16, 1992, from (Dr. EC), which indicated he conducted a physical exam, reviewed reports of Drs. P and PG, an account of the incident by employer personnel, and various medical records of claimant which claimant apparently limited to those made subsequent to the incident. Dr. EC opined that decontamination procedures for the TBA unit appeared adequate and he made the following observations respecting TBA: "[t]ertiary butylamine is a strong organic base whose presence in very small quantities would elevate the pH of an aqueous solution well above 7.0. A solution potentially containing t-butylamine but whose pH is 7.0 would be of no health consequences." Dr. EC felt that no significant quantities of tertiary butylamine were present in the liquid splashed on claimant, and that claimant's conduct on the days of and following the incident was inconsistent with exposure to potentially injurious concentrations. He said that the complaint of conjunctivitis in January 1992 was not relevant given the passage of time. In his view, any eye irritation from exposure to tertiary butylamine would have resolved within days and not manifested irritation and acute inflammation two months later. Dr. EC stated that the presence of a sliding esophageal hernia and peptic ulcer disease were the more reasonable explanations for claimant's gastric distress and rectal bleeding. At the time of his examination, Dr. EC found claimant to have sustained no apparent disability and to be "quite paranoid." Dr. EC reached the following conclusions: "There is nothing in the medical records which supports the patient having sustained any caustic injury as the result of skin contact with this substance. The patient and his physicians appear to be attributing this ulcer disease and his behavioral dysfunction directly to the effects of tertiary butylamine and, in fact, a relationship between these events is impossible by any toxicologic mechanism."

Claimant introduced a lengthy report dated August 31, 1992, from Dr. P in response to carrier's request of Dr. P that he indicate his areas of disagreement with Drs. EC and PG. In essence, Dr. P said that while he agreed with a number of things said by Drs. EC and PG, he mostly disagreed with their conclusions from the data at hand. Dr. P observed as follows:

> I do indeed believe there was <u>something</u> in that chemical spill, call it a "mystery chemical" if you like, but there was something in there, and that something did indeed cause an injury to the central nervous system. [Claimant] has suffered from an emotional trauma which resulted in a [PTSD.] . . . [Claimant] has indeed suffered from an injury and it is my belief that that injury in all reasonable neuropsychological probability is due to the chemical spill which

took place 10/26/91. I believe the chemical spill is responsible for the majority of the symptoms that we now see.

The hearing officer found, among other things, that the liquid with which claimant was splashed while wearing protective goggles and a hard hat was not toxic and had a pH of 7.0, or neutral; that claimant was not exposed to a toxic chemical on (date of injury); that the only injury reasonably related to the exposure to the liquid were the areas of skin irritation on his face and ear of which he complained on (date); that he suffered from a sliding esophageal hernia and peptic ulcer disease prior to (date of injury) and that neither his chemical conjunctivitis nor emotional disorders were due to the liquid spilled on him on (date of injury). Based on these and certain other findings, the hearing officer concluded that claimant failed to prove by a preponderance of the evidence that his injuries, other than the irritation to areas of skin near his hairline and right ear, were compensable under the 1989 Act.

We disagree with claimant respecting the adequacy of the evidence to support the findings and conclusion. Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence but also of its weight and credibility. An employee claiming workers' compensation benefits for a work-related injury has the burden of proving that the injury occurred in the course and scope of employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). There must be evidence establishing a causal connection between the injury and the employment. Schaefer v. Texas Employers Insurance Association, 612 S.W.2d 199 (Tex. 1980). Claimant had the burden to prove his GI and emotional disorders were caused by the liquid which the evidence established splashed on him at work. It seems clear the hearing officer placed more credence in the opinions of Drs. EC and PG and, as the trier of act, he was free to do so. Conflicts or inconsistencies in the evidence, including the medical evidence, are matters for the hearing officer to resolve. Highlands Underwriters Insurance Co. v. Carabajal, 503 S.W.2d 336, 339 (Tex. Civ. App.-Amarillo 1973, no writ). Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 289-290 (Tex App.-Houston [14th Dist.] 1984, no writ).

We will not substitute our judgment for that of the hearing officer where, as here, the findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ.). The challenged findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re Kings' 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge