

APPEAL NO. 931030

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Article 8308-1.01 *et seq.*) On August 31, 1993, and October 15, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that the appellant (claimant) did not sustain a compensable injury or occupational disease as a result of chemical exposure on or about (date of injury). Claimant asserts that the evidence shows a compensable mental trauma injury was sustained. Respondent (carrier) replies that the appeal stresses mental trauma while the adjudication process previously dealt with the claim as one of physical injury.

DECISION

We affirm.

At the hearing the issues were stated to be: whether claimant was compensably injured or contracted an occupational disease as a result of exposure to polyethylbenzene or benzene on or about (date of injury); whether requirements for notification of the injury to employer were met in some manner; and whether claimant has had disability. Section 410.204(a) states that the appeals panel "shall issue a decision that determines each issue on which review was requested."

On appeal the claimant asserts that a mental trauma injury was sustained. Specific attention was given to the report of (Dr. C) who reported "presence of longstanding anxiety" and referred to claimant's depression. The appeal then states, "[t]he employer put [claimant] in a position to cause him to worry about his performance." The appeals panel is asked to find that claimant sustained a "compensable mental trauma injury due to the exposure on (date of injury), and this mental trauma injury did cause disability..."

The appeals panel determines:

That sufficient evidence supports the findings and conclusions of the hearing officer, including the conclusions that claimant did not sustain a compensable injury/occupational disease and that claimant's medical condition was not caused by the exposure to polyethylbenzene or benzene.

Claimant is a pipefitter who works for (employer). In January, at some time in the period of (date of injury) through (date), claimant disconnected a pipe valve of a line that had contained polyethylbenzene. (Mr. N) testified that he worked with claimant on the day in question. He described the process as a "shut down" and said that he flushed the line twice with river water; in flushing, water was run through the line and then drained. This flushing and draining took place twice. Claimant took off a side of the control valve and some amount of water with some polyethylbenzene came out. The valve was about 18 inches off the floor. When asked why some liquid came out, Mr. N stated that a little will be left in the pipe after flushing and draining, and that it should not be more than about a cup. He could see some indication of liquid on claimant's gloves and shoes but did not see that claimant's shirt was soaked. Mr. N said that polyethylbenzene has a strong odor.

Claimant asked what was in the line and Mr. N told him polyethylbenzene, adding that there was no benzene. Claimant washed and went back to work, and Mr. N first heard of an assertion of injury in April. Mr. N added that claimant washed his hands a lot prior to the time of the incident.

Claimant did not testify.

At the initial date of hearing in August, the hearing officer granted a continuance because claimant had recently changed treating doctors from (Dr. G) to (Dr. F) but claimant had not been able to get a report from Dr. F to provide the hearing officer. When the hearing resumed in October, Dr F's records were available and showed that he had seen claimant in July and August of 1993. His testing of claimant showed, "his Epstein-Barr virus nuclear antigen IgG to be strongly, highly positive, and his Epstein-Barr virus viral capsid antigen to be also unequivocally positive." Dr. F said he discussed this with claimant and referred to claimant's chronic fatigue. With these results, Dr F did not think that the chemical exposure had anything to do with claimant's "weakness". Dr. F also referred to claimant's condition as "chronic fatigue syndrome." (Dorland's Illustrated Medical Dictionary, twenty sixth edition refers to Epstein-Barr virus as "herpes like virus that causes infectious mononucleosis".)

When the hearing resumed in October, claimant had a new treating doctor, (Dr. E). Dr. E testified that claimant's past exposures to chemicals could give rise to a reactive depression. He said that claimant's "detoxification pathway" is not working. He said that claimant is chemically sensitive and that claimant's condition is due to the exposure of (date of injury). Dr. E also stated that he does not know the dose and duration of the exposure, but that he links the exposure as the cause because of the history. Dr. E is not on the staff of any hospital. He did not state how he would provide treatment for claimant.

Prior to his death, Dr. G had also linked claimant's exposure on (date of injury) to his weight loss, withdrawal, and his complaints of increased sensitivity to odors. (Dr. G first referred to having treated claimant for "idiopathic thrombocytopenia" in 1991; claimant had his spleen removed and was reported as able to maintain his blood platelet count without bleeding problems.) Dr. G said that claimant was checked by a neurologist since the 1993 incident with negative findings and also refers to (Dr. P) a psychiatrist. Dr. G concludes:

(claimant) has suffered severe symptoms since he was exposed to benzene in the workplace. All attempts to find an alternative etiology for his symptomatology have been unrevealing. I believe that his decline is directly related to the traumatic effect of his acute exposure.

Claimant's wife testified that she told Dr. G of claimant's exposure to benzene at work. She added that it was benzene to her whether it had a "polyethyl" in front of it or not. She told the doctor of symptoms occurring about a week after the exposure, but did say some milder changes had occurred sooner that were viewed as possibly flu or a similar disorder. She acknowledged that claimant had missed approximately 40 workdays and 38

workdays in the previous two years at work. She said that claimant had not worked since February 3, 1993.

Dr. C was appointed by the Texas Workers' Compensation Commission to report as to whether claimant's exposure caused his condition. He is a toxicologist and reviewed the records of other doctors, including Dr G, examined claimant, and concluded that no toxicologic effect had been established. He diagnosed "idiopathic thrombocytopenic purpura, nonresponsive but asymptomatic" and "endogenous depression". He referred to claimant's "longstanding anxiety" as to possible health effects of "potential exposure" to toxic substances. He states:

At this point, the patient's responses to the events of (date of injury) appear to relate primarily to the misunderstanding that he did sustain exposure to benzene.

The patient's primary difficulty at the present time is his depression which deserves treatment by an appropriate mental health professional. The patient does not manifest any evidence of either acute, chronic or ongoing toxicological significance.

Dr. C said that claimant exhibits no symptoms of polyethylbenzene exposure. He added that if claimant had sat in a bathtub of polyethylbenzene for a week it would still not explain his symptoms. (Dr. C said, though, that the effect of polyethylbenzene on the skin would keep claimant from staying in it very long.) He pointed out, during cross-examination, that if claimant had approached enough exposure to have had kidney failure, he would have experienced brain anesthesia (transient) first and the kidney problem would have materialized in weeks, but it did not. (There was no evidence that claimant was rendered unconscious by the odor or that he noted any less dramatic brain reaction to the incident at the time.) He stated that claimant's depression was not caused by the exposure. He stated that the incident was a "non-poisoning event."

(Dr. P) is a PhD in organic chemistry. He was called by the carrier and discussed dosage amounts and the cumulative propensity of polyethylbenzene. He said that polyethylbenzene is only "very slightly" cumulative; even for absorbed polyethylbenzene, the half life is a matter of days. He said that if a person "sloshed around in it," it would hurt the skin so bad that one could not stay in it for a period of time. Even if exposed, it would not have caused the symptoms claimant has. Polyethylbenzene is "totally different" from benzene. He was of the opinion that claimant was not injured by the exposure incident, and the incident did not aggravate any condition claimant had.

While the hearing officer made no finding of fact specifically as to mental trauma, he did find that "credible medical evidence" showed the exposure did not cause claimant's medical problems. This finding coupled with the conclusions of law that claimant did not sustain a compensable injury or occupational disease and that claimant's medical condition was not caused by chemical exposure sufficiently state that no compensable mental trauma injury occurred. The record indicates that claimant's depression was discussed. In

addition, the hearing officer in his Statement of the Evidence shows that he specifically considered the depression when he stated that physician's reports did not establish a causal link between the depression and claimant's belief as to exposure; he pointed out that Dr. C said the depression was not caused by claimant's belief that he was exposed to benzene.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165. He could believe Dr. C and Dr. P and the reports of Dr. F as opposed to the report of Dr. G and Dr. E. See Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.). He could give Dr. G's report little weight in view of claimant's wife's testimony that she told Dr. G claimant had been exposed to benzene, not polyethylbenzene, and Dr. G based her report on exposure to benzene; in addition the hearing officer could question Dr G's report since it did not find a basis for concluding chemical exposure was causative but only found it causative because other causes were not found. He could choose to give Dr. E's testimony less weight than Dr. C's or Dr. P's because Dr. E did not know the amount or duration of exposure, did not know what is in polyethylbenzene, and agreed that other substances in the environment could trigger a reaction in claimant.

The findings of fact and conclusions of law are sufficiently supported by the evidence; the findings of fact and conclusions of law sufficiently support the decision and order that no compensable injury or disease occurred to claimant and that claimant has no disability as a result. See Texas Workers' Compensation Commission Appeal No. 93791, decided October 18, 1993, which said that without a compensable injury the issue of disability is moot. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge