APPEAL NO. 931070

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on September 28, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) was not injured in the course and scope of employment on or about (date of injury), and has not had disability. The claimant disagrees with the hearing officer's finding of fact that his symptoms were not caused by a gasoline splash on (date of injury), and the hearing officer's conclusions that he was not injured in the course and scope and has not had disability. The respondent (carrier) urges that the finding and the conclusions of the hearing officer are supported by sufficient evidence and asks that the decision be affirmed. The carrier's assertion that the request for review is untimely lacks merit as the records of the Texas Workers' Compensation Commission (Commission) show that the decision was distributed to the claimant on November 4, 1993, which, with mailing time, gave the claimant until November 24, 1993, to seek review. The request is postmarked November 24th and was timely received by the Commission.

DECISION

Finding the evidence sufficient to support the finding and conclusions raised on appeal, the decision is affirmed.

The claimant was employed as an electrician's helper on (date). As a part of his duties he worked in the vicinity of gasoline pumps at a pipeline terminal. He testified that he complained about the gasoline fumes from the first day ((date)) and that he subsequently had gasoline spilled on him on two occasions, the latter of which ((date of injury)) he had some gasoline on his face, mouth, nose and hair which he washed off. His supervisor testified that he was not aware of these occasions although he worked with the claimant at the time but that there were gas fumes in the work area and that he noted in a log book that the claimant complained one time about the fumes and that he felt dizzy. The claimant testified that he went to the doctor on (date) after the latter incident of (date of injury), with a number of complaints concerning dizziness, nauseousness, blurred vision, skin irritation, headaches, trembling and loose bowels. The claimant returned to work but was not assigned to the terminal and was subsequently terminated for reasons related to his job application. He testified that he subsequently worked several other jobs for short periods of time but that he was not able to work satisfactorily and apparently quit. He claims that he is better, but that he still has headaches and some of the symptoms from the gas fumes. He also indicated that he took pictures (which were admitted) of the terminal area around the time of the incident "because I thought it might be pertinent if -- it may be helpful if some -- you know, I started developing -- I was already getting headaches and all, and just thought they might be helpful just to show, you know, where we were working" and that he took pictures of what he described as "washing gas out into the creek" which he was going to turn over to EPA. He stated he usually carried a camera to work.

The medical evidence was in some degree of conflict concerning the claimant's

physical condition and the cause of the symptoms of which he complained. (Dr. A) who the claimant saw several times, diagnosed "post-toxic exposure headaches with other symptoms" and took the claimant off work. Dr. A also, later in March, reported an abnormal evoked potential study, and suggested that the claimant might have "an organic mental disorder as associated with toxic exposure, however confusion (sic) elements need to be clarified." In an April 1993 report, Dr. A indicated a diagnosis of "hydrocarbon toxic exposure headaches, with possible encephalopathy symptoms" and "neurophysiologic abnormalities on visual evoked response and cognitive P300 suggestive of toxic exposure." In August he reported a normal evoked potential study, "considerably improved from his previous study." A psychologist saw the claimant and noted that his "neuropsychological picture is confusing," and recommended an evaluation to "further assess what, if any deficits he may have." A carrier-requested doctor, a pulmonary disease specialist, determined that the claimant suffered no definable injury to his lungs, nor were there any other objective medical findings to support the claimant's "variety of non-specific complaints."

In her Discussion section, the hearing officer noted that the evidence was persuasive that the claimant was splashed with an unknown amount of gasoline on (date of injury) but that he did not establish as a matter of reasonable medical probability that there was a causal connection between the splash and his various symptoms. As indicated, there was some conflict in the medical evidence. The hearing officer, as the finder of fact, is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)) and is equally responsible for judging the weight to be given expert medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Even though evidence in a case may reasonably give rise to different inferences, such is not a sound basis upon which to disturb the decision of the fact finder so long as there is sufficient evidence in the record to support the decision. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We have consistently held that we do not substitute our judgment for that of the fact finder and in reviewing a hearing officer's decision we will reverse only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex.1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 29, 1992. Here, the hearing officer considered the evidence before her and was not able to find from that evidence the necessary causal connection between the work and the claimant's symptoms. The decision is sufficiently supported by the

evidence and a correct application of law. *See* Texas Workers' Compensation Appeal No. 92612, decided December 30, 1992.

The decision is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Robert W. Potts
Appeals Judge