APPEAL NO. 931127

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly TEX. REV. CIV. STAT. ANN. Article 8308-1.01 *et seq.*). On November 1, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine whether claimant JS, who is the appellant, was injured on (date of injury), in the course and scope of his employment with (employer); another issue was the correct date of injury.

The hearing officer determined that claimant was not injured and did not acquire an occupational disease through his employment, and that his respiratory illness was an ordinary disease of life.

The claimant appealed, arguing that he became sick from vapors that arose as he cleaned a spot from a floor mat, and that this spot was put there by a customer who worked at a nuclear plant. The claimant asks that the decision be reversed in his favor. The carrier responds that the decision should be upheld.

DECISION

We affirm the hearing officer's decision.

The claimant, who was employed as a maintenance man for the employer, said that he was asked on (date of injury), to clean floor mats from the store, and he took these to a car wash for that purpose. The claimant loaded the mats into his truck and unloaded them at the car wash. The claimant said that as he sprayed a stain on one mat with water, "vapor" came up off the mat. By the time he returned to the store, claimant stated he "lacked air" and reported to a supervisor at the store that he was ill.

Claimant's testimony as to when he first experienced breathing problems was confusing at times. At one point, he said that the mats were also heavy and he had breathing problems while reloading them in his truck. At another point, he said that he had some trouble breathing as the vapors rose off the mat. Claimant said he recalled that this incident occurred on (date of injury) because his wife put up the Christmas tree that day and the pollen bothered him to such extent that it had to be taken down.

Claimant denied that he had ever been treated for breathing problems before (date). Medical records, however, indicate that he was treated for respiratory ailments beginning several months before the incident in question, as well as after (date). The history in an August 1992 hospital record attributes claimant's respiratory problems to a carpet cleaning incident in M four years earlier. There is indication in the medical records that claimant has also been treated for cardiac arrhythmia. Although there is one memo dated January 30, 1992, from the office of (Dr. R), stating that claimant was hospitalized due to toxicity from what appears to be "thephynine," there is nothing else in the medical records, including a March 9, 1992, letter from Dr. R, to support an allegation that claimant sustained respiratory problems from inhalation of a toxic substance.

The issue relating to the date of the alleged exposure apparently arose because of various dates of injury which appear in medical records or on the claim for compensation filed by the claimant, none of which was (date of injury). Claimant's various explanations for this were that he signed his claim form in blank and it was filled out by the employer with a January date, or that he was misinterpreted by translators, or that he had some trouble recalling dates.

There was no evidence at all as to what the substance on the mat was, or what the vapors were. The point about the spot being put on the mat by an employee of a nuclear plant was raised for the first time on appeal.

Claimant's daughter, (Ms. R), testified that her father had no breathing problems to her knowledge before he left employment in (date). The store manager, (Mr. C), testified from his recollection that claimant worked during January 1992, although he could not recall his last date of work.

Given the evidence in this posture, the hearing officer's determination that claimant did not show that he was injured by a preponderance of the evidence, and that his respiratory condition is an ordinary disease of life, is sufficiently supported by the evidence. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). As was the case in Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992, claimant's alleged exposure to "vapors" that are not even identified is not sufficient to prove that a compensable injury occurred. In this case, the medical evidence clearly showed that claimant, contrary to his testimony, had been treated for respiratory ailments prior to (date).

We affirm the determination of the hearing officer.

Susan M. Kelley
Appeals Judge

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge