APPEAL NO. 931146

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S. Article 8308-1.01 *et seq*.) (1989 Act). On November 19, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant (claimant) did not show that the rash he, and other workers, developed was caused by his work. Claimant asserts that the decision is against the great weight of the evidence. Respondent (carrier) replies that the evidence sufficiently supports the decision of the hearing officer.

DECISION

We affirm.

Claimant worked in the bakery at (employer). He testified that on (date of injury), after working with a particular batch of dough that contained a substance with an orange color, he started itching. "Since that day," a rash spread over his body that he described as similar to hives, with open lesions. He said other employees developed it too, but he did not say that it developed at the same time as his, followed his, or that his followed someone else's. Claimant said that his "hives" lasted about a month and one-half. He did say:

> . . . even some of the girls did come in contact with it to a certain extent. Because I worked it more -- but they might have gotten their hands on some of the certain substances which might have caused them to -- we compared what it is that I had and what it is they had and, you know, we showed each other and, yeah, you know, it's the same thing, you know.

Claimant then named three other employees in regard to the rash. None testified or provided a statement. Claimant did say he asked both his mother and his boss at work if either had changed the detergent they used; no detergent change was reported.

Claimant provided six medical care documents. One pertained to billing; two were from his family doctor, (Dr. H) and only addressed his return to work without specifying what care was given; one was a report of x-rays of his chest and back; the remaining two were from (Dr. E) and discussed the rash. One was a return to work slip which did say that the cause had not been "specifically identified"; it also said claimant could return to work "since he is not going back into the bakery." This slip was dated September 21, 1992. A Report of Medical Evaluation indicates that claimant was seen on September 4, 1992, but it found maximum medical improvement on September 21, 1992, with no impairment. This report, however, states there was a "sudden onset of rash," but also says it occurred "about 7/15/92." Dr. E notes that when he gave claimant "Decadron" and claimant stopped work, the rash cleared up. He added that only limited skin testing (negative) was done because claimant did not return to complete testing.

Claimant testified that Dr. E asked him to get a sample of the products (dough) he was exposed to at work for testing, but that his employer would not provide it. Dr. E's documents do not reflect that request or claimant's inability to provide the material. RG) a

manager of the store, said that the employer had had "the dough" tested. RG said "the grease" was tested. RG also said the linen company was contacted to see if a different detergent had been used. RG indicated that the responses he received did not indicate a problem. The employer did not choose to offer into evidence the results of any testing alluded to. RG did say that claimant never solicited a sample of anything for testing. RG agreed that others in the bakery developed a rash; he said that employer sent two to a dermatologist, but that claimant never asked to go. RG did say that employer wished to find the cause of the rash too.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She could give some weight to RG's testimony about negative test results even though no documentation of the testing was provided. While nothing was provided to show that the dough in question was that which was tested, claimant, on the other hand, provided no indication that other employees developed the rash at the same time. According to the record of Dr. E, claimant may have developed the rash approximately two weeks prior to the time he says he handled the dough in question. While Dr. E did not state the cause of the rash, he pointed out that it disappeared when claimant left the workplace. (*See* Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991, which considered that a claimant got sick again when he returned to the work environment in determining disability.) With the only evidence as to cause of the rash being the testimony that more than one employee contracted it, the hearing officer's decision was sufficiently supported by the evidence of record. In affirming the decision of the hearing officer, attention is called to Texas Workers' Compensation Commission Appeal No. 931094, decided January 14, 1994, which dealt with several employees exhibiting symptoms of fumes at the workplace at the same time.

Finding that the decision and order are not against the great weight and preponderance of the evidence (*See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951)), we affirm.

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Alan C. Ernst
Appeals Judge