APPEAL NO. 93874

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S. 8308-1.01 *et seq.*). On September 17, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue to be resolved was: "Did the Claimant sustain an injury in the course and scope of his employment on (date of injury)?" The hearing officer determined that the appellant, claimant herein, did not prove by a preponderance of the evidence that he sustained an injury in the course and scope of his employment on (date of injury).

Claimant contends that the hearing officer misapplied the facts, the law, and the argument presented at the hearing, and requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant testified that on (date of injury), he was changing a chlorine gas cylinder at a water well operated by his employer. Claimant testified he had connected the cylinder, stepped out of the room to catch his breath and upon reentering the room inhaled "a couple or three breaths of the gas" before he realized the valve was leaking. Claimant stated that he left the room, began coughing, lost consciousness, fell down and when he came to was dizzy, had double vision, and "became loop-legged." Claimant states he went to his truck rested a few minutes, then holding his breath tightened the leaking valve. Claimant states he then went home rested for a while and attempted to go back to work but that he was still dizzy, and "had a couple of falls." Claimant states he rested until his wife came home, then ate supper and went to bed early. Claimant testified his symptoms had continued to gradually worsen during the course of the evening and that he was unable to use his left arm and leg that evening. Claimant went to the hospital emergency room (ER) the following morning, (date), where he was seen by (Dr. G). Claimant testified that he is 56 years old, approximately six feet tall and weighs well in excess 300 pounds (estimated to be between 338 and 350 pounds).

Dr. G, in the history portion of the hospital discharge summary, notes claimant ". . . had no prior history of cardiac or cerebrovascular or hypertensive disease. He had a history of diabetes which had required no treatment in the recent past. He had a history of right nephrectomy for nephrolithiasis five years previously." In a report dated June 15, 1992, Dr. G states that claimant was hospitalized on (date), "for a right hemisphere CVA." Dr. G notes that claimant had been in prior good health when he "developed progressive left-side weakness and mild confusion and apraxin . . . . There was a stuttering onset of his symptoms. In fact, he did not seek care the day they initially started but waited until the following day when he was completely unable to move his left arm and leg at all." Claimant was apparently hospitalized nine days. Dr. G mentions in his report that he discussed the

possibility of claimant's neurologic injury being related to the inhalation of chlorine gas. Although claimant believed the gas inhalation contributed to his stroke, Dr. G indicated that he ". . . was aware of no scientific evidence substantiating focal neurologic injury being related to chlorine gas inhalation." Dr. G said he reiterated his feeling ". . . that his stroke was primarily secondary to a long history of poorly controlled diabetes and hypertension."

Claimant was also treated in an in-patient rehabilitation program by (Dr. S), who in a note dated August 8, 1992, stated "I do not believe that [claimant's] CVA was related to inhalation of chlorine gas."

Claimant was examined by (Dr. P) in the Occupational Medicine Department at the University of Texas Health Center at (city). Dr. P records an extensive and detailed history of claimant's current problems and past medical history to include the 1987 right nephrectomy, claimant's diagnosis of diabetes and being ". . . placed on oral hypoglycemics in 1987 when he had his nephrectomy, however, these led to hypoglycemia and he was taken off of them, so he was on no medications at the time of his cerebrovascular accident." Dr. P notes claimant was basically very healthy although the doctor does note claimant is "extremely obese." Dr. P in summation discusses her view of the chlorine gas exposure leading to the stroke as follows:

> [Claimant] has significant risk factors for cerebrovascular accident, namely untreated diabetes and hypertension. However, the time course in this incident indicates that there may have been some contribution from the chlorine gas exposure. As I explained to the patient, chlorine is not expected to cause any neurological deficits, but may have caused some respiratory difficulty. There may have been temporary hypoxia which led him to pass out, or he may have had cough syncope, either of which could have been related to sudden intense chlorine gas exposure. The patient had no respiratory embarrassment noted by his wife or at the hospital, so I do not think that there were any significant lung sequelae to this, however, there may have been short term problems at the time of the exposure. Additionally, it is possible that he hit his head. Although the time course for this cerebrovascular accident would be longer than expected for an embolic phenomenon, it is possible that an embolus was discharged when he hit the ground. I think this somewhat less likely than a steadily progressive hemorrhagic stroke or possible just coincidental with a thrombotic stroke. I explained to the patient that there is essentially no way of proving this at this point, but the time relation of waking up after the chlorine gas-induced syncope, particularly because he had no prior symptoms whatsoever either that day or in the recent past, makes some association likely. At least the chlorine may have set into motion a chain of events such as hypoxia leading to syncope leading to head trauma.

Because of the apparent differences in medical opinion, at carrier's (and apparently the Commission) request, claimant was seen by (Dr. C). Dr. C had available the hospital records, a written statement by claimant describing the circumstances of the injury, Dr. P's

consultation, and Dr. G's report. Dr. C also interviewed claimant and his wife regarding the events of (date of injury). After noting the history, conducting a physical examination, making a diagnosis, and in a discussion noting claimant's theory that hypoxemia, caused by gas inhalation, contributed to his stroke, discarded claimant's theory as untenable and stated:

> In reasonable medical probability, the alleged chlorine gas exposure in the course of this patient's employment played no role whatever, either primary or contributing, to the patient's clinical course of cerebrovascular insufficiency and stroke.

Claimant, in rebuttal, consulted (Dr. B) concerning the disputed causal connection. Dr. B, in a report dated August 24, 1992, stated:

> Based on the documentation provided by [Dr. P], there seems to be a clear cut relationship between the onset of his neurologic deficit and his exposure to chlorine gas. In conclusion, I think the temporal relationship between his exposure to chlorine and the onset of his neurologic symptoms is quite clear and this implicates the chlorine exposure as a precipitating factor of his cerebrovascular accident. I don't think there is any evidence that chlorine per se causes cerebrovascular accidents, but I think the precipitation of this accident was due to the noxious effects of chlorine on the respiratory symptoms and the secondary effects that this insult would have on blood pressure and cerebrovascular blood flow.

We note that Dr. B appeared only to have Dr. P's report and apparently did not consider the hospital records, or Dr. G's and C's reports.

The hearing officer correctly noted that in a case of this type, the causal connection, if any, is of such a technical nature, that its resolution requires medical evidence. *See* Schaefer v. Texas Employers Insurance Association, 612 S.W.2d 199 (Tex. 1981). The hearing officer then had to evaluate the medical evidence presented to determine whether there was a causal connection between claimant's inhalation of chlorine gas and his subsequent CVA. The hearing officer determined that the medical evidence introduced by claimant was insufficient to establish a causal connection between breathing chlorine gas and the onset of his cerebrovascular accident (stroke or CVA) on (date of injury), and therefore claimant had not proved that he sustained an injury in the course and scope of his employment. Claimant appealed, in essence contending the hearing officer had not understood claimant's theory of causation and that there were errors or inconsistencies in Dr. G's report and discussion, and that Dr. C "was not objective in his examination and report of his findings."

A review of the record discloses that claimant made his theory of the injury amply clear at the CCH. Claimant clearly enunciated his theory that the sudden exposure to the chlorine gas caused a shortness of breath, a severe coughing spell and that claimant passed

out for a period of time and that the coughing and fall in turn increased his blood pressure and caused the stroke to happen. It is also clear that the hearing officer understood this was claimant's position because he outlined claimant's theory in the body of the decision. Even if Dr. G and Dr. S did not understand the full impact of claimant's theory, the remaining medical evidence of Dr. P's, C's and B's reports still presents conflicting and contradictory medical evidence addressing claimant's theory of causation. As the hearing officer notes, carrier contends that Dr. P's report is couched in qualifying terms and is susceptible to different interpretations. On the other hand, claimant criticizes Dr. G's report as being contradictory or wrong regarding his statement that claimant was insulin dependant and had suffered from prolonged hypertension compared to another portion of his report that said claimant had not been on medication for several years. Claimant also criticizes Dr. C's report because it was based on only one visit (which we conclude was also the case with Dr. B) and that Dr. C, who had all the other reports available to him, ". . . fails to state any of the history he received or to detail this account."

We note that the hearing officer is the sole judge of the relevancy and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). Which medical report to believe and which opinion has greater weight than another is a factual determination within the province of the hearing officer. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the expert medical testimony and judges the weight and credibility to be given the expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.- Houston [14th Dist.] 1984, no writ); Highlands Underwriters Ins. Co. v. Carabajal, 503 S.W.2d 336, 339 (Tex. Civ. App.-Corpus Christi, 1973 no wit). Being aware of claimant's theory, the hearing officer nonetheless apparently found Dr. G's and Dr. C's evidence more convincing than medical evidence to the contrary in Dr. P's and Dr. B's reports. Particularly, we note that Dr. C, having all the previous reports and opinions available to him, including Dr. P's report, still found, in reasonable medical probability, that the exposure to chlorine gas "played no role whatever, either primary or contributing" to claimant's CVA. On the other hand Dr. B apparently had only claimant's version of the injury and Dr. P's report available to him. We find that the hearing officer's decision is supported by sufficient evidence.

Finding that the hearing officer's decision is supported by sufficient evidence, we will not disturb those determinations unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986). We do not so find and the decision of the hearing officer is affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Philip F. O'Neill
Appeals Judge