APPEAL NO. 94159

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. On November 30, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He closed the record on January 21, 1994, and determined that respondent (claimant) established a causal connection between nodules on his left hand and his employment. Appellant (carrier) asserts that certain findings of fact are incorrect and that there is no evidence to support the causative finding or that the causative finding is against the great weight and preponderance of the evidence. Claimant replies that the hearing officer should be upheld.

DECISION

We affirm.

Claimant worked for (employer) from approximately August 1989 to (month year). Claimant's work included loading and unloading shelves of porcelain knobs into kilns; he checked each knob for defects. In (month year), claimant filed a claim for injury for lumps on two fingers of his left hand; he stated that he first noticed these nodules while working for employer. (Claimant indicated that when the nodules were removed in 1993, the feeling in the affected fingers returned.) Claimant left work for employer in (month year). In August 1991, claimant began work for another employer (employer 2) where he stayed until the end of 1992. Claimant also worked a short period of time for one other employer and did some carpentry work for his sister in Washington state since filing the claim.

The first doctor claimant saw was (Dr. G) who said that he could not tell what caused the nodules on claimant's middle and ring finger of his left hand. Dr. G's earliest report in the record states, however, in July 1991 that claimant has "hard nodules on the back of the PIP joints of the index and middle fingers" of his left hand. Dr. G then referred claimant to (Dr. S) for nerve conduction studies related to carpel tunnel syndrome. Dr. S in August 1991 did not treat the nodules on the finger joints but did note their existence and indicated they did not appear to be attached to the bone; he did state that claimant provided a history of lifting "heavy sheets of material." Dr. G also referred claimant to (Dr. B) who also saw claimant in August 1991, noting that claimant "loaded plates of material into kilns" weighing "30-40 pounds." Dr. B referred to the nodules on claimant's left middle and ring fingers as "fibrous tumors." In 1993, Dr. L commented that the nodules may be "foreign body granulomas" and recommended excising them on July 9, 1993. Carrier then provided a pathology report made on August 24, 1993, from Hospital that states under "diagnosis" that the left hand nodules are "rheumatoid nodules." In 1993 (Dr. W) also tested claimant for carpel tunnel syndrome, and (Dr. WZ) reported in 1993 that he had not stated that claimant's "medical condition" was work related.

Dr. L also provided a letter to carrier dated September 3, 1993, which stated that claimant's "problems with his hand were aggravated by his work." Carrier complains that Dr. L's report was made two years after the event and that supplementary questions it prepared to be presented to Dr. L for clarification of his statement were not used; no inquiry of Dr. L was made. R), who saw claimant in March 1993 in Washington, referred to the

nodules on claimant's fingers of his left hand as "probable rheumatoid arthritis;" he also stated "left carpal tunnel syndrome clinically. Despite the prior negative nerve test I feel this a firm clinical diagnosis." Having claimant's history of work in loading a kiln, Dr. R then concluded that claimant's lifting activities aggravated "the arthritis symptoms."

The carrier took issue with claimant's inability to remember what he told Dr. L in regard to his history as to work at other jobs since noticing the nodules in 1991 while working for employer. The record is clear that Dr. G, Dr. S, and Dr. B all noted the nodules subsequent to claimant's work for employer and prior to his work for employer 2. Claimant also filed his claim prior to going to work for employer 2. The carrier questioned whether any other work may have aggravated the nodules subsequent to claimant's employment with employer, but it did not introduce any evidence that work with employer 2 had aggravated claimant's condition. While a fabricated history given to a physician may cause error in a resultant diagnosis, the thoroughness of a history as to activities that may have aggravated a condition is a matter for the hearing officer as finder of fact to consider. The hearing officer is the sole judge of the evidence. *See* Section 410.165. He determines the weight and credibility to assign to any evidence. The hearing officer could consider Dr. R's report as indicating that employer's work place contributed to claimant's nodules. *See* Texas Workers' Compensation Commission Appeal No. 91106, decided January 10, 1992.

Carrier asserts that claimant did not work for employer at all relevant times as found by the hearing officer. In the context of the claimant's testimony as to when he noticed the nodules, the date the claim was filed, and the reports of these doctors that the condition existed prior to work for employer 2, the finding is sufficiently supported by the evidence.

Carrier also asserts that claimant did not perform heavy repetitive labor as found. Both Dr. S and Dr. B referred to the claimant's history in terms consistent with the word "heavy" (heavy sheets of material and plates of material weighing 30 to 40 pounds), which along with claimant's testimony in regard to repetitive trauma, make this finding sufficiently supported by the evidence.

Finally, carrier states that there is no evidence or insufficient evidence of causation between claimant's work for employer and the nodules to affirm the decision. The report of Dr. R provides some evidence that the work contributed to claimant's problem of feeling in his fingers because of the nodules. In addition, the report of Dr. L can be interpreted as augmenting Dr. R in indicating that work for employer aggravated claimant's hands. Conversely, while other doctors state that they cannot say what caused claimant's nodules, neither Dr. G nor Dr. WZ stated a cause or ruled out work as a contributing factor. The hearing officer in assigning weight to the evidence may also assign more weight to one doctor's opinion than he does to another. *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.).

The hearing officer concluded that there was a causal connection between the work and the nodules. The court in Hernandez v. Texas Employers Ins. Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ) defined the standard for compensability on that

basis; unlike the evidence in Hernandez, which contained no medical evidence that the work place contributed to the asthma in question, the case before us does have medical opinion that the work place contributed to claimant's injury. The decision and order are not against the great weight and preponderance of the evidence and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge