APPEAL NO. 94168

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 5, 1994, in, (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue at the hearing, remaining from the Benefit Review Conference and as concurred in by the parties, was whether on (date of injury), the respondent (claimant) suffered a chemical exposure injury in the course and scope of her employment. The hearing officer determined that the claimant did suffer a compensable injury on (date of injury), in the nature of an aggravation of a pre-existing condition of allergic rhinitis. The appellant (carrier) appeals this decision and numerous factual findings as not supported by sufficient evidence. The claimant replies that there was sufficient evidence to support the decision and urges affirmance.

DECISION

The decision and order of the hearing officer are affirmed.

The claimant worked since December 1989 as a dryer operator for a company (employer) that imprinted various designs on shirts. According to the evidence, the duties of the dryer operator included taking imprinted items off a conveyer belt after they were run through a drying machine and stacking them for further distribution. On occasion (estimated by the employer to have been from two or three times a month to two or three times a year), the claimant would have to spray a shirt with a silicone compound to remove residual glue from a shirt. In addition, a dryer operator had to clean "squeegees" which were the part of the printing machine that held the ink. In a nearby room, other employees (not the claimant) used a cleaning agent to clean print screens between design applications.

The claimant testified through an interpreter that the plant always had a bad odor which she could not further describe, but to which she was exposed throughout the day and could not escape anywhere in the plant. She said that she and other dryer operators were not required to wear masks or protective clothing, but did have available a thin paper mask to cover the nose and mouth. She did not recall when she first began to feel ill, but on (date of injury), she felt especially nauseous, weak and had a headache. She could not stand it any more so on that day she went to (Dr. T), her treating physician. She was convinced that "the chemicals" were making her sick. Dr. T's treatment records disclose that the claimant had been complaining of general body aches since early 1992. On (date of injury), he wrote a note excusing the claimant from work for one week "for acute respiratory problems." The claimant gave this note to her supervisor. When she returned to work, she said she smelled the same chemicals and felt the same ill effects. She returned several times to Dr. T with the same complaints. As a result of an office visit on July 30, 1992, Dr. T wrote a note which read:

To whom it may concern:

My patient is experiencing headaches & dizziness & rashes, as a consequence of chemicals used in your workplace. It is beneficial for her to stop working there. (Underlining in original.)

The claimant testified that she took the note to her supervisor who reportedly told her that there was no place in the plant she could work without smelling chemicals. The claimant then stopped working for employer and her condition apparently abated. Since the end of July 1992, she worked in part-time jobs briefly and at the time of the hearing was receiving unemployment compensation. She said that Dr. T never specifically told her what chemicals were causing her problems, but she did take him a sample of the silicone spray.

The claimant admitted that on April 16, 1992, she signed a health care claims form already typed out by the employer. An "xx" was typed in the box of the form which indicated her injury was not work connected. She said, however, that she did not understand this document when she signed it and is unable to read English. She also admitted signing on April 18, 1992, an application for non-work connected disability for the period from (date of injury), to April 13, 1992, also prepared by the employer[1], but testified she did not understand the form and does not recall ever receiving a disability check as a result of filing this form.

In another "To whom it may concern note" of March 5, 1993, Dr. T states:

My patient had to quit her work at [employer] 2nd [sic] to exposure of chemicals there causing severe allergic rhinitis & asthma.[2]

Dr. T confirms his diagnosis in a letter of August 11, 1993, wherein he records that the claimant first came to him with this problem in December 1991 and told him she believed it was caused by chemicals at work. Dr. T said her prognosis was good "if she avoids the cause of her allergies." In a note of September 7, 1993, Dr. T reiterates that the claimant's allergic rhinitis "was probably not caused but was aggravated & exacerbated by the chemical exposure in the workplace." (Underlining in the original.) In a written deposition introduced into evidence at the hearing, Dr. T again stated his opinion that the claimant was suffering from "allergic rhinitis exacerbated by work environment," and that her condition was "directly related to work environment." He also stated that his diagnosis was based on his physical examination of the claimant and on the list of chemicals, including silicone

[1]Carrier did not contend that this amounted to an election of remedies thus barring any workers' compensation claim, but advanced the applications only as evidence that the claimant did not suffer an injury in the course and scope of her employment. *See* Texas Workers' Compensation Commission Appeal No. 93662, decided September 13, 1993.

[2]Dorland's Illustrated Medical Dictionary, 27th Edition (1988), defines rhinitis as "inflammation of the mucous membrane of the nose," and allergic rhinitis as "a general term used to denote any allergic reaction of the nasal mucosa."

spray, given him by the claimant and represented by her as being used in her workplace. He defined rhinitis as "inflammation of nasal turbinates." He stated that the symptoms only last a few days after exposure. He also agreed that agricultural chemicals can cause the same symptoms.

(Mr. M), the Director of Industrial Relations and Safety for the employer, testified about the chemicals used by the employer and the duties of the claimant. Also introduced into evidence were Material Safety Data Sheets[3] for certain chemicals used by the Employer. Mr. M stated that most cleaning solvents were replaced in the Fall of 1991, with biodegradable substitutes. The health hazard data provided by OSHA for the silicone spray used by the claimant advises that "excessive inhalation of vapors can cause nasal and respiratory irritation, dizziness, weakness, fatigue, nausea, headache, possible unconsciousness, and even asphyxiation." He stated that since 1991, the employer has used a water based glue to affix shirts to the printing machines and that the squeegees are cleaned with a citric based cleaner that is biodegradable. OSHA inspections in 1990 and 1991 found all chemical releases substantially below maximum allowable workplace concentrations, but fined the employer for not providing proper training on using hazardous chemicals. Mr. M conceded that everyone in the plant could smell the chemicals being used, but not every worker was directly exposed.

The pertinent Findings of Fact and Conclusions of Law to which the carrier takes exceptions are:

FINDINGS OF FACT

4.Chemicals were used by the employer in the building in which Claimant worked from 1989 to July 30, 1992.

8.Claimant suffered from allergic rhinitis during the period of her employment with employer in early 1992.

9.Claimant's allergic rhinitis is an ordinary disease of life to which the public is exposed outside of employment, however, the non-toxic chemicals and odors present in Employer's workplace exceeded the level of exposure to non-toxic chemicals and odors normally experienced by the general public.

11.Claimant's allergic rhinitis was aggravated and exacerbated by her exposure to the non-toxic chemicals and odors present in Employer's workplace.

[3]These are used by the federal Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor to record hazardous characteristics of substances used in the work place and provide precautions for safe use.

12.Although Claimant did not suffer a chemical exposure injury by inhaling the non-toxic chemicals and chemical odors present in the workplace, she did suffer an aggravation of her preexisting allergies while on the job for the Employer on or about (date of injury).

13.The increased allergic reaction caused by Claimant's repeated exposure to the non-toxic chemicals and odors in the workplace constitutes harm to the physical structure of the body and is therefor an injury.

14.Claimant resigned upon the advice of her treating doctor on July 30, 1992 because she was experiencing difficulty due to the aggravation of her allergic rhinitis by the non-toxic chemical exposure and chemical odors in the workplace.

15.Claimant's allergic reaction diagnosed on (date of injury) was an occupational disease. Claimant suffered an aggravation of her allergies by inhaling the non-toxic chemical and chemical odors present in the workplace.[4]

CONCLUSIONS OF LAW

3.Claimant aggravated her preexisting allergic rhinitis in the course and scope of her employment on or about (date of injury).

4.Claimant's medical condition is an injury caused by exposure to chemicals in the course and scope of her employment.

We begin our discussion of this case with three observations. First, a claimant in a worker's compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). It is equally clear that an aggravation of a pre-existing condition can be a compensable injury in its own right, but in order to find compensable aggravation, there must be an active incident or sequence of incidents which are alleged to have resulted in the enhancement, acceleration, or worsening of the pre-existing condition. Texas Workers' Compensation Commission Appeal No. 93416, decided July 8, 1993. Third, an

[4]As noted above, the issue at the hearing was whether the claimant suffered an injury on (date of injury). The parties agreed to this formulation of the issue and presented their evidence and respective positions on the issue as so framed. The hearing officer made an express finding of fact that the claimant suffered an aggravation injury on (date of injury) (Finding of Fact No. 12). He, nonetheless, also found that the claimant's injury was caused by "repeated exposure to the non-toxic chemicals and odors in the workplace" (Finding of Fact No. 13) and that the claimant's allergic reaction on (date of injury), "was an occupational disease" (Finding of Fact No. 15). These findings are not necessary to the decision and may be disregarded. *See* Texas Indemnity Insurance Company v. Staggs, 134 Tex. 318, 134 S.W.2d 1026 (Tex. Comm'n App. 1940, opinion adopted).

injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the ability from common knowledge to find a causal connection. We believe that as a general principle, and in this case in particular, expert evidence was required to establish a causal connection between the claimed aggravation of allergic rhinitis and chemicals inhaled by the claimant in the course and scope of her employment. In any event, Dr. T did provide expert evidence on the question of causation and the hearing officer could give this evidence the weight he deemed it merited. *See* Texas Workers' Compensation Commission Appeal No. 92220, decided July 13, 1992.

In its appeal, the carrier basically raised three challenges to the decision of the hearing officer:

1. That the claimant did not identify the specific chemical agents used at work that caused her injury.

2. That the level of exposure to the chemicals used by the claimant in the workplace was not high enough to cause injury.

3. That the claimant did not establish that she suffered an injury as defined by the 1989 Act.

We address each of these contentions below.

It is essential that a claimant link the alleged injury to an event at the workplace and establish a causal relationship between the injury and the employment. Texas Workers' Compensation Commission Appeal No. 92108, decided May 8, 1992. The claimant in the case now on appeal asserts that chemical inhalation at work caused her injury. Of the numerous chemicals mentioned at the hearing, most were not in use at the time of the alleged injury except for the silicone spray which the claimant specifically asserted was a chemical she used and breathed on the job. *Compare* Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992, where the claimant was found not to have established a compensable injury by simply alleging exposure to "noxious" fumes. In testimony uncontradicted on this point, the claimant said she gave a sample of the silicone to Dr. T. Dr. T, in turn, listed the silicone as one of the chemicals he considered in arriving at his decision that it was a causative factor in the aggravation of her allergic rhinitis. There was also evidence in the form of a Material Safety Data Sheet that this silicone spray, at least in excessive amounts, when inhaled, can cause the same symptoms the claimant displayed and Dr. T confirmed. The carrier contended that the silicone spray was seldom used and no other employee had the same complaints as the claimant. However, the carrier could not say that the claimant did not use the spray on (date of injury), or how often or how much of it she used. The claimant testified that she felt especially ill on this day and that the spray was making her sick. It was the responsibility of the fact finder to judge the relevance and materiality of this evidence and its weight and credibility. Section 410.165.

We will not set aside a decision because different inferences and conclusions may be drawn from the evidence, or when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer obviously believed the account of Dr. T that the silicone caused the aggravation of the claimant's condition and that the claimant breathed silicone in sufficient amounts on (date of injury), to aggravate her allergic rhinitis. We will not overturn a decision of the hearing officer where, as here, it is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier's contention that the level of exposure to chemicals was not high enough to cause the alleged injury is also unpersuasive. The carrier premises this contention on the employer's compliance with OSHA standards for exposures to certain chemicals in the workplace and asserts that there was no evidence that any other dryer operator had the same reaction as the claimant. (There was also no evidence that any other employee had the same allergic rhinitis that the claimant had.) We do not believe the OSHA standards were intended to establish cutoff levels below which no individual would be deemed injured by an exposure. In any event, compliance with such a standard, albeit relevant evidence, does not in itself rebut a claim of injury from a specific exposure. Similarly, the fact that another employee doing the same work and having the same pre-existing condition, did not experience an aggravation of that pre-existing condition is not dispositive of the claimant's claim.

Finally, the carrier contends on appeal that the claimant did not suffer an injury as defined by the 1989 Act. Section 401.011(26) defines injury in pertinent part as "damage or harm to the physical structure of the body" and includes occupational diseases. The injury alleged in this case, an aggravation of rhinitis, involved an inflammation, however short lived, of the mucous membrane lining of the nasal passages and, according to Dr. T, included "severe nasal congestion, sputum production, [and] conjunctival irritation." We have previously affirmed a decision of the hearing officer awarding benefits based at least in part on the medical condition of rhinitis. *See* Texas Workers' Compensation Commission Appeal No. 93994, decided December 8, 1993. In the case now under consideration, we believe that claimant's medical condition, described as an aggravation of her allergic rhinitis with symptomatology, as reported by Dr. T, constitutes an injury as defined by the 1989 Act. The hearing officer's finding that the aggravation of the claimant's pre-existing rhinitis was an injury is supported by sufficient evidence.

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge