

APPEAL NO. 94216

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 22, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent (claimant) was injured compensably from inhaling gasoline fumes between (date of injury) he also found that she had disability on three occasions including a period from April 1, to December 7, 1993. Appellant (carrier) asserts that the evidence is insufficient to support the finding of fact that the inhalation caused depression and the finding of fact in regard to the last two periods of disability. Claimant replies that the decision should be upheld.

DECISION

We affirm.

Claimant worked as a manager of a small convenience store with gasoline pumps. She testified that from time to time one can smell gasoline, but beginning (date of injury), and continuing until (date of injury), the smell of gasoline was pervasive. She testified that she informed her boss of the smell and at one time the location of a vent in the store was moved. She testified, without contradiction, that other workers also had headaches and other symptoms from the smell. Even customers complained of the smell. The evidence indicated that on (date of injury), the source of the leaking fumes was found and capped.

The only two issues at the hearing were whether there was a compensable injury and for what periods did claimant have disability. There was no issue as to maximum medical improvement (MMI), although one doctor addressed MMI. Medical evidence confirmed that claimant was injured by the inhalation, and that finding was not appealed. Claimant complained of headaches, dizziness, sore throat, coughing, and mood swings. She was hospitalized in September 1992 to try to diagnose what was wrong with her. Upon returning to work in late September, the smell seemed worse. She developed incontinence from her coughing, which she stated that her doctor confirmed was the basis for the incontinence. She was to a point where she felt she could work no more and stopped working on (date of injury). At this time she saw Dr. St, who recorded under "diagnosis" on his Initial Medical Report that claimant had an "inhalation injury-gasoline fumes, headaches, allergy, and depression." Claimant went to (Dr. R) a psychiatrist, who recorded that claimant complained of blurred vision, memory loss, mood swings, numbness, and depression. He noted her history of gasoline fume inhalation over a period of time, and "apparently had prolapse [sic] bladder, due to intense cough due to fumes." He found that she was depressed.

Claimant testified that she had never been depressed prior to inhaling this gasoline in this period and had not been treated for depression prior to this time. She has currently been seeing (Dr. B) who, in September 1993 stated that claimant has post-traumatic stress syndrome and major depression. He stated she suffers severe mood swings and "fear of

re-experiencing toxic fumes." He did not advise a return to work in September 1993, but claimant said that Dr. B felt that she could return on December 7, 1993.

Claimant also saw (Dr. K), a toxicologist, in April 1993; he reported that "her acute illness, which is resolved, with central nervous system and respiratory components, is related to her gasoline fume inhalation exposure." He also observed that she quit work in March 1993 because she was passed over for promotion. (Dr. G) reviewed claimant's records for the carrier and observed that claimant's incontinence was probably due to a past hysterectomy. (Dr. G did not address whether persistent coughing could aggravate the condition resulting from the hysterectomy.) Dr. G also said that Dr. R had not linked claimant's depression to the gasoline fumes and that Dr. K found no problems in psychological testing which he conducted. Dr. G then said, "In short, the claimant's multiple subjective complaints are largely unsupported by objective findings." He concluded that past diagnoses made regarding gasoline fumes were based on her history and said, "[t]his type of an exposure does not produce chronic symptomatology." Dr. G's report is dated July 21, 1993.

Claimant had improved while away from work in November and December 1992, so she returned to work on December 20, 1992. She said her symptoms were not as severe upon returning because the leak had been capped. She nevertheless continued to have symptoms and was seeing (Dr. T), a neurologist, in early 1993 for her symptoms, including numbness in parts of her head and face and headaches. Claimant testified that the smell of gasoline at the pumps (what could be considered a normal smell of gasoline) triggered her old responses; she feared being around gas fumes. She said that at the end of March 1993, she was depressed and quit her job. On September 17, 1993, claimant was admitted to a hospital for depression and a suicide attempt. She was discharged on September 24, 1993.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. While Dr. G stresses "objective" findings (but does not state that no objective findings exist), Houston Independent School District v. Harrison, 744 S.W.2d 298 (Tex. App.-Houston [1st Dist.] 1987, no writ) said that generally, injury and disability may be established by testimony of a claimant and other lay witnesses. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992, agreed that lay testimony could be the basis for a decision as to disability, generally. In this instance, the hearing officer could consider both claimant's testimony and medical opinion based on subjective evidence together with objective evidence on issues relating to the extent of the injury and disability. He is not required to make findings of fact as to causation or disability based solely on objective evidence including objective medical evidence. See Texas Workers' Compensation Commission Appeal No. 92030, decided March 12, 1992. As stated, there is no appeal of the finding that claimant suffered a compensable injury from the inhalation of gasoline fumes. The hearing officer found three periods of disability: one in September 1992, which is not contested on appeal; one during parts of November and December 1992 and another from April 1, 1993, to December 7, 1993, which are contested. The evidence is unrefuted that the leak was not fixed until the time that claimant left work in

November 1992 for the second time. She states that the smell had worsened during the time that she returned to work after her hospitalization in September 1992. While she was depressed, she still had the acute symptoms that even Dr. K's report would indicate could be present in November before the leak was capped. The disability period in November and December 1992 is sufficiently supported by claimant's testimony and the medical evidence as to symptoms caused by gasoline inhalation.

The disability period from April into December 1993 is related to the finding of fact that claimant had depression resulting from the gasoline inhalation. Depression was diagnosed by Dr. R, Dr. B, and (Dr. A) who saw claimant at her last hospitalization in September 1993. Dr. B described claimant's fear of gasoline inhalation. See Peebles v. Home Indemnity Co., 617 S.W.2d 274 (Tex. Civ. App.-San Antonio 1981, no writ), in which the court held that medical treatment for depression of a claimant, who had a knee injury and was afraid his knee would not function properly, "naturally resulted from the compensable injury." In this case claimant testified to no prior depression, and no evidence indicated that depression had pre-existed the gasoline inhalation. While Dr. B does not say "the inhalation caused the depression," reading his September 14, 1993, letter, including reference to her history of inhalation, her fear of toxic fumes, Dr. B's reference to future employment in relation to her fear of toxic fumes, his diagnosis of post-traumatic stress disorder and major depression, indicates that causation is possible. This possibility, together with the other evidence that inhalation of such fumes, causing acute symptoms, occurred over a period of months and that claimant had no depression before this period allows the fact finder to conclude that the inhalation naturally contributed to the depression. See Insurance Company of North America v. Kneten, 440 S.W.2d 52 (Tex. 1969), which considered a doctor's testimony in regard to an electrical shock followed by a heart attack which talked in terms of "possibility" as providing sufficient background for the fact finder to make a determination that was "not conjecture." The finding of fact that the inhalation of gasoline fumes contributed to claimant's depression is sufficiently supported by the evidence.

Once the claimant was found to have depression resulting from the inhalation, the finding of disability from April to December 7, 1993, is sufficiently supported by the evidence. During this period, she saw Dr. K and Dr. B and was admitted to the hospital for depression in September where she was seen by Dr. A. She testified to her fear of gasoline fumes and that Dr. B said she could return to work on December 7th; there was no evidence contrary to this assertion.

With no issue of MMI, the hearing officer was not required to make any finding of fact as to MMI; his finding that MMI had not been reached is sufficiently supported even though Dr. K, after seeing claimant in April 1993, stated that she had zero percent impairment but gave no date of MMI.

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

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge