APPEAL NO. 94254

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 26, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue to be determined was whether the claimant, DJ, who is the appellant, sustained a compensable injury through an occupational disease with a date of injury of (date of injury). The claimant contended he had been exposed to heavy metal fumes at work, in the course and scope of employment with (employer).

The hearing officer determined that the claimant's current medical problems were an ordinary disease of life, and he had not been injured by his work for the employer.

The claimant appeals the decision, pointing out where he believes the hearing officer misunderstood the evidence, and arguing the evidence he believes in favor of injury. The carrier responds that the decision should be affirmed, and that the evidence sufficiently supports the decision of the hearing officer.

DECISION

We affirm the decision and order of the hearing officer.

The claimant, who worked for the employer as a welder for 16 years, stated that he had experienced increasing sinus problems and allergic reactions over the years. He stated that he had life-threatening allergic reactions to stinging insects, beginning when he was in college, and prior to his employment by the employer. The claimant also did welding at his home, some for the employer, and some for private reasons.

Claimant said that he had an episode of fainting in 1992 at scouting summer camp, and felt better after he took antihistamines. Claimant said he thereafter gave up drinking tap water which would contain chlorine, drank bottled water, and his physical condition had improved as a result.

Claimant said he consulted with his family doctor sometime in April 1992, when his postnasal drip became so bad it would cause vomiting, and was eventually referred to an allergy practice of (Dr. R) and (Dr. RO). He said that he first considered the possibility of a work-related toxic exposure after Dr. RO said he had symptoms of heavy metal toxicity. The substance identified as the contaminant was 1-1-1 trichloroethane (methyl chloroform). Also generally identified as a contaminant was "welding smoke".

Claimant said 1-1-1 trichloroethane was a solvent used to degrease some coil parts prior to the welding operation. He said that the solvent bath had originally been about 30-40 yards from his work station, but had been moved "years" ago to another building, approximately 100 yards away. His theory of exposure seemed to be that when the coils were removed from the bath, they were stored 25-35 feet from his work station, and, prior to welding, would be blown out with air pressure. He stated that any liquids still in the coil

would be vaporized and go into the air. He conceded that he had never tested, and did not know for sure, if any residue liquid in such coils would be 1-1-1 trichloroethane.

Dr. RO recommended therapy to detoxify claimant and remove "xenobiotics" which involved a course of aerobics, massage, and intravenous therapy, at a cost of $3,500 to 4,500 per month. Claimant still worked for the employer and attempted to avoid welding smoke. He said his wage had gone up.

Claimant said Dr. R had supplied him with an air pump from which he gathered air for testing and the development of a vaccine to desensitize him to the work place. He did not know what, if any, tests had been done on this sample. He said that he sought a second opinion from doctors in (state), (Dr. D) and (Dr. H). According to these doctors, the recommended vaccine treatment could be dangerous.

To very briefly summarize the medical evidence, Dr. R and Dr. RO tested claimant's blood and hair. Various heavy metals were detected in claimant's hair sample. Dr. RO opined that claimant's exposure to heavy metals at work resulted in contamination. Dr. RO opined that claimant had liver toxicity.

By contrast, Dr. D and Dr. H state that there was no clinical evidence of increased body burden or toxic systemic effects from the work place. They note that claimant has a history of aspirin allergy, as well as insect stings, and may be sensitive to chlorine. The report does say that they believe exposure to chemicals at the work place could be causing nasal irritation. Dr. H and Dr. D state that chlorine sensitivity is not believed to be related to work. They recommended against the vaccine and the therapy proposed by Dr. RO.

(Mr. D), the controller for employer, stated that beginning May 1993, the use of 1-1-1 trichloroethane was phased out, which was completed in August 1993. He said the reason had nothing to do with any human hazard, but was because the chemical was one of those identified by the government as compromising the earth's ozone layer. He stated that a five year check of workers' compensation claims filed with the employer did not turn up another chemical exposure claim.

(Mr. L), a chemist whose expertise was air quality testing, performed air quality tests at the employer's plant on May 21, 1993. There were five tester air pumps in the area, for a period of three hours. Mr. L stated that more hours would have been more desirable, but he still felt that the results of his test were accurate. Air flowed through filters and matter captured on these filters was analyzed for presence of metals, particulates, and organic materials. The test would have detected 1-1-1 trichloroethane, if it had been present. He stated that there was no detectable 1-1-1 trichloroethane in the air samples he took. Mr. L further stated his understanding that this substance was less hazardous to humans than predecessor chemicals used for the same purpose, although he understood that vapors from exposure of the substance to heat could be hazardous.

The usefulness of hair testing was called into question. Drs. H. and D state that the hair samples would be totally inadequate because of external contamination, which they rated as high due to claimant's welding occupation. Mr. L stated that such testing did not differentiate between internal metal content and external metals absorbed into the hair. Therefore, metals detectable in a hair sample would not necessarily be only those absorbed internally, but would come from the external environment as well.

A letter from (PhD. W), PhD., states that 1-1-1 trichloroethane is ubiquitous in the water and food supply and that the concentration of the substance found in claimant's blood sample could be explained by this. He cites a study in which asymptomatic persons had vastly higher concentrations of the substance in their blood after intentional exposure. He also questioned the interpretation of the hair sample tests. PhD. W concludes that within reasonable scientific probability, claimant's medical problems were not related to exposure to metal fumes or 1-1-1 trichloroethane at work.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers' Insurance Ass'n v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Co. of Pittsburgh, Pa. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

Exposure to toxic chemicals through inhalation, and the resultant effect on the body, are matters beyond common experience, and medical evidence should be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. *See* Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992; Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993.

As we see this case, it does not rise or fall on the air quality tests done by Mr. L. The hearing officer would still have had to be persuaded that claimant proved his case, through expert evidence, that his medical problems were linked to an exposure to an identifiable substance at work. Here, the record indicated allergies not related to the work place. There was conflicting evidence on the extent to which clinical, objective evidence of harmful exposure was presented. From all this, the hearing officer could conclude that claimant's general allergic symptoms resulted from ordinary diseases of life, rather than any work place exposure.

We agree that the decision of the hearing officer is supported by sufficient evidence in this case, and affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge