APPEAL NO. 94295

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On February 1, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issues to be determined were whether the claimant, GC, who is the respondent, sustained a hiatal hernia as a result of exposure to arsenic on (date of injury), and whether he had disability (the inability to obtain and retain employment equivalent to his pre-injury wage due to a compensable injury) from October 30, 1992, until June 30, 1993. The hearing officer determined that claimant established the causal link between his exposure and the hiatal hernia, and that he had disability from October 30, 1992, until June 30, 1993.

The carrier has appealed numerous findings of the hearing officer's decision. The carrier also argues that claimant failed to establish, through medical evidence, the causal connection between his injury and treatment therefor, and the arsenic exposure that "unquestionably" took place. The carrier agrees that a doctor appointed by the Texas Workers' Compensation Commission (Commission) to analyze claimant's case has good credentials, but argues that he did not have all of claimant's past history before him when he rendered his opinion, and further that he reached a conclusion not supported by the scientific literature. The carrier also disputes the period of disability found by the hearing officer. The claimant responds that its expert had access to claimant's prior medical history, and that carrier's own experts were not even apprised of this in forming their conclusions. The claimant argues that the decision of the hearing officer is supported by the record and should be affirmed.

DECISION

We affirm.

The claimant, who worked for (employer), was stationed at a location in which he was asked, on (date of injury), to use a cutter torch while dismantling a metal box which had contained arsenic. In the course of this, an arsenic inhalation exposure took place which the carrier did not dispute. Claimant said that in May 1992 he developed increasing coughing spasms. He also had a swollen tongue, dizziness and headaches, upset stomach and nausea as well, beginning the afternoon of (date of injury). Claimant was given a urinalysis by the company doctor on April 24th, which showed elevated arsenic.

Claimant eventually consulted (Dr. R) relating to heartburn and reflux. He was diagnosed with reflux symptoms with dysphagia, and a condition of esophagal irritation which could if untreated, lead to cancer. He was referred to a general surgeon, (Dr. A). Dr. A testified at the hearing. Notwithstanding statements in the summary of the evidence attributing an opinion to him (from his notes) that arsenic exposure caused a hiatal hernia to develop, Dr. A candidly testified at the hearing that he had no opinion one way or the other and was not experienced in arsenic poisoning and its effects. He could, and did, testify as to the initial surgery he performed to alleviate claimant's reflux, on September 9, 1992, which also involved a repair to a hiatal hernia (although this was not the primary objective of the

surgery.) Dr. A also testified as to additional surgical procedures that claimant had as a result of complications arising out of the first surgery. Dr. A said that claimant could not work from these surgeries or the pain that followed, although he did not discuss with claimant the possibility of doing light duty or other jobs not requiring bending or lifting. He released claimant to full duty effective January 25, 1994.

The case essentially boils down to the various medical opinions, depositions, and medical records of the case. An extremely brief summary of opinions follows:

- (Dr. B), from Clinic, in May 1992 attributed claimant's symptoms including mild hepatitis to arsenic toxicity. Objective tests were performed.

- Dr. R performed an esophagogastroduodenoscopy on July 27, 1992, and found a small hiatal hernia; he also found esophageal erosions and ulcerations secondary to gastric reflux. A biopsy indicated some non-malignant cellular irregularities. In a July 17, 1992, letter, Dr. R noted that claimant dated the onset of his gastric problems back to April. Dr. R noted the arsenic exposure, but did not draw a connection between that exposure and his reflux. A patient information sheet dated July 29, 1992, and attached to Dr. R's records notes that claimant's "hernia" had been bothering him more since his scope procedure.

- (Dr. K), an M.D. with a specialty in toxicology, described how he felt that arsenic inhalation caused bronchitis and severe coughing trauma which aggravated a previously asymptomatic esophagitis associated with hiatal hernia. Dr. K both reviewed claimant's records and examined him. Attached to his letter were excerpts from publications describing the effects of arsenic.

- (Dr. C), an M.D. specializing in toxicology, reviewed claimant's medical records for the carrier, but did not examine claimant. He concluded that claimant had not sustained acute arsenic poisoning (as indicated by his urine specimen on April 24th), and that his medical problem was not consistent with arsenic poisoning. Dr. K noted that Dr. C's opinion made assumptions appropriate for an oral arsenic exposure, rather than inhalation, which Dr. K felt flawed Dr. C's conclusion. Dr. C's deposition deals with the inhalation nature of claimant's exposure, which he agreed had occurred, but arrives at the same basic conclusion. He noted that alternative dietary causes of claimant's reflux had not been explored in the records he reviewed.

Briefly summarized only as to complaints of a thoracic nature, claimant's pre-injury medical records from the mid-1980's documented complaints of chest pain, and some urinary tract problems. While there was one mention that chest pain might be a manifestation of "gastro intestinal cardia spasm", claimant did not appear to have been treated for hiatal hernia or indigestion.

The case poses the classic "dueling experts" conflict which it is incumbent upon the trier of fact to weigh and resolve. There is one point of merit to carrier's appeal when it complains that the evidence doesn't support the hearing officer's finding of fact that the hiatal hernia was caused by Dr. R's internal scope examination; the evidence more accurately indicates that the hiatal hernia was detected, not caused by, the diagnostic procedure. But this finding is not fatal to the decision. The hearing officer also found that the hiatal hernia was causally related to the inhalation. Dr. K's opinion, which is the primary expert opinion establishing the natural link between the arsenic exposure, the hernia, and the subsequent effects of surgery, clearly and unambiguously connected the events through a trauma caused by coughing. The coughing spasms were testified to by the claimant. Contrary to what carrier argues, we find nothing in claimant's prior medical history which indicates material facts on the issue of gastric disturbances that undermine Dr. K's opinion. Indeed, Dr. K's opinion noted that claimant may have had pre-existing but asymptomatic esophagitis. Even if the hearing officer misspoke as to his interpretation of Dr. R's records, it is clear he based much of his decision on Dr. K's opinion (as noted by the carrier in its appeal).

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. TEX. LAB. CODE ANN. § 410.165(a). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). 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). The hearing officer's conclusions and findings on both issues are supported in the record.

We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge