APPEAL NUMBER 94952
FILED SEPTEMBER 1, 1994

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 June 15, 1994, in (City 2), Texas, with (hearing officer) presiding as hearing officer. The issues at the hearing were: (1) did the respondent (claimant) sustain a compensable injury in the form of an occupational disease on _____, and (2) did the claimant have disability resulting from the injury sustained on _____, and if so, for what period(s). The hearing officer determined: (1) that the claimant sustained a compensable injury in the form of an occupational disease on _____, which includes toxic hepatitis, nonpsychotic mental disorder, and brain damage; and (2) that the claimant had disability from November 12, 1992, through the date of the hearing on June 15, 1994. The appellant (carrier) appeals urging that the evidence is not sufficient to support the determinations of the hearing officer and requests that the Appeals Panel reverse and render a decision that the claimant is not entitled to income and medical benefits. The claimant did not file a response.

DECISION

Finding the evidence sufficient to support the determinations of the hearing officer, we affirm.

The claimant testified that he worked for (employer) as body shop manager for about two and one-half years. He testified that his job included using body filler, sanding, and spray painting. Claimant said that he was not provided the proper type of respirator and that the ventilation system in the spray paint booth did not work properly. He went to the Veterans Affairs (VA) Hospital in (City 1), Texas, in March 1992 because of shortness of breath and breathing problems. On April 17, 1992, he went to the emergency room at (Health Center) in (City 2), Texas, because of breathing problems. The next day he returned to the VA Hospital in City 1. On _____, he left work in the afternoon because he was out of breath, was weak, and could not work. Claimant has not worked since that day. After Thanksgiving in 1992, claimant went to the (Clinic) in (City 3), Texas, and was seen by Dr. M. Dr. M reported that the claimant was hospitalized in December 1992, and tests were conducted. A liver biopsy revealed toxic hepatitis. Dr. M also reported that the claimant had some degree of heart failure of unknown etiology. Dr. M opined that the claimant's long history of exposure to various solvents on the job certainly may have contributed to the toxic hepatitis. Claimant was treated by Dr. CU and Dr. T at (Hospital) in City 1 who related his liver problems to his exposure to chemicals at work. At the request of the Texas Workers' Compensation Commission (Commission), the claimant went to Dr. K, a toxicologist in (City 4), Texas. Dr. K had tests conducted and referred the claimant to Dr. H, who has a Ph.D. in psychology, for psychological testing for organic brain disease and to Dr. B, a radiologist, for SPECT scanning. In reports dated

September 22, 1993, and December 23, 1993, Dr. K reported that he would not relate the claimant's heart condition to his work place exposure to chemicals but he would relate the claimant's liver and brain syndromes to his work place exposure to chemicals. In the December 23, 1993, report Dr. K stated:

In coming to [sic] conclusion, it is important to know that brain syndromes caused by solvent exposures all improve on removal from exposure. He has not been working and has been removed from exposure; and, he appears to be improving. Natural occurring brain syndromes, such as Alzheimer's, premature generalized arteriosclerosis and others all gradually get worse, not better as he is doing.

The carrier had Dr. C review the medical records of the claimant before he was examined by Dr. K. In a report dated April 12, 1993, Dr. C stated that he did not agree with the conclusion of the attending physicians that the liver abnormality manifested by the claimant was the consequence of his employment. Dr. C reported "[i]n reasonable medical probability, the work place is an unlikely cause or contributor to this patient's hepatic dysfunction." Mr. S, the owner of the employer, testified that he provided safe working conditions for the claimant. Also, Mr. S testified that because of a misunderstanding concerning work on a vehicle owned by Dr. M, Dr. M has a personal vendetta against him and his car dealership.

The burden of proof is on the claimant to prove by the preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. Also under the 1989 Act, the claimant has the burden of proving the extent of the injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. Where the subject of an injury is not so scientific or technical in nature as to require expert testimony, lay testimony and circumstantial evidence may suffice to establish causation. However, in cases such as the one before us where the matter of causation is not an area of common experience, expert evidence may be essential to satisfactorily establish the link or causation between the injury and the employment. Section 401.011(16) of the 1989 Act defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Also, the claimant has the burden of proving by a preponderance of the evidence that he or she sustained disability. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993.

We view the evidence including the expert evidence as sufficiently supportive of the challenged determinations. The hearing officer is the trier of fact under the provisions of the 1989 Act. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to given to the evidence. Section 410.165(a). The trier of fact can believe all, part, or none of any witness's testimony because the finder

of fact judges the credibility of each and every witness, the weight to assign to their testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and it 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 Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's factual determinations were so against the great weight and preponderance of the evidence to be clearly wrong and unjust, would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. Accordingly, the decision and order of the hearing officer are affirmed.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge