APPEAL NO. 971508
FILED SEPTEMBER 11, 1997

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 21, 1997. The sole issue concerned a claim for compensation by the appellant, (claimant) who is the claimant, for a disease she contracted on _____, whether she had disability from that injury, and the amount of her average weekly wage (AWW).

The hearing officer determined that the claimant contracted campylobacter gastroenteritis as an ordinary disease of life and that it was therefore not compensable. He determined that her AWW was $1,000.00 a week.

The claimant appeals this decision, disputing that her condition is not an ordinary disease of life, and arguing that her job as a flight attendant "forced" her to be in the foreign country where she was exposed to the disease. She argues that her injury falls under the personal comfort doctrine. The carrier responds by citing the case of Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980) in support of its argument that the fact that a disease may be unusual does not mean it is not an ordinary disease of life, and further citing expert testimony that the bacteria is indigenous to the entire world, including the State of Texas.

DECISION

Affirmed.

Succinctly, claimant was a flight attendant who was in (City, State), overnight after working on a flight into that country. That next day, _____, she and some fellow employees ate lunch at a restaurant. She had fish, pico de gallo, and rice and vegetables. Claimant fell ill on a flight to (Country) on January 8th. Her symptoms were dysentery, fever, chest pain, headaches, and pleurisy. Because another person with whom she had eaten got sick, she concluded that there was something at the lunch they shared which caused the disease. Claimant said her symptoms subsided after medical treatment and that she flew into (City, State) the entire month of January. She said she had a similar attack at the end of February after flying into (City). She went to a hospital emergency room on March 2nd when back in Texas.

The disease affected the claimant's red blood count, and she was hospitalized. She was cleared to return to work on April 30, 1997. She stated that she was not given a choice of where to fly and because more senior flight attendants did not want to fly into South America, she was assigned those routes. Claimant testified that she was at more risk of contracting disease by "being in South America."

(Dr. H) testified on behalf of the carrier. He described how campylobacter bacteria could be transmitted, often by the failure of a person to wash her hands after coming in

contact with fecal matter and stated that it was not rare. He said it was normally self-limiting, lasting around 14 days, although more severe complications and symptoms could also occur. He said the incubation period was typically between two and seven days. Dr. H stated that there were 105 reported cases of this bacteria recorded in Texas for 1996 and said that this was likely an underreported figure because a physician typically would not report the normal things that go on in life. Claimant lived just over the county line from (County), Texas; Dr. H said that (County) accounted for 22% of the reported cases.

Claimant's doctor, (Dr. A), wrote a letter stating his opinion that she contracted the bacteria during work-related travel to South America. His deposition on written questions identified him as an infectious disease specialist. He agreed that it was "entirely possible" that the claimant acquired her disease through an exposure apart from food ingested in South America. He stated that her disease had caused an inability to work, with an acute illness period of three weeks and recuperation after that time.

An "occupational disease" is considered a compensable injury, according to the definition set forth in Section 401.011(34) unless it is:

> . . . an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

Schaefer, *supra*, was a case involving contraction of a bacterial lung disease by a worker who worked underneath houses. As that case pointed out, the fact that an illness is contracted which is unusual or rare does not render it any less an "ordinary disease of life." As we read the ordinary disease exclusion, it was intended to exclude contraction of illness and disease, even if contracted on the job or through a coworker, that are essentially a "hazard" of living in general. Even if the hearing officer believed that claimant proved that her disease traced to South America, the test of whether she was exposed to greater hazard than the general population is not whether her job caused her to be in South America, but whether she stood a greater chance of contracting the disease because of her job than any other traveler to South America. There was no evidence that this was the case. Further, there was evidence that the bacteria was present in Texas, and specifically in the area where the claimant lived.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). 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, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ).

Exposure to disease 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 Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer, *supra*; Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992; and Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993. In this case, the hearing officer could consider testimony from Dr. H and Dr. A that the bacteria was not unique to South America and the claimant could have contracted her illness elsewhere.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge