APPEAL NO. 971919

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 18, 1997. With respect to the single issue before him, the hearing officer determined that the decedent did not sustain a compensable injury in the form of an occupational disease, which resulted in his death. In her appeal, the appellant (claimant), the widow of the decedent, argues that the hearing officer's determination that the decedent did not sustain a compensable occupational disease injury is against the great weight and preponderance of the evidence. In its response, the respondent (self-insured) urges affirmance. In addition, the self-insured asserts error in the hearing officer's admission of one of the claimant's exhibits. While the document was timely filed as a response, it was not timely filed as an appeal; therefore, we will not consider the evidentiary challenge on appeal.

DECISION

Affirmed.

The hearing officer's decision contains a detailed factual summary that will not be repeated here, except as necessary to put the decision in context. Briefly, it is undisputed that from 1983 to his death on _____, from lung cancer, the decedent was a firefighter with the self-insured. The decedent was diagnosed with metastatic adenocarcinoma in May 1995. He was born in 1954 and was a nonsmoker. The claimant argued that the decedent's cancer was caused by his inhalation of airborne carcinogens during his work as a firefighter.

In support of her claim, the claimant introduced a report from Dr. AF, a Professor of Occupational and Environmental Medicine at the University. In a report dated February 21, 1997, Dr. F stated:

> Specifically, with regard to the issue of lung cancer, there are some studies in the literature documenting an excess of lung cancer among firefighters. This has now been documented in Washington state, California, and in Denmark. Firefighters are known to be regularly exposed to a variety of carcinogenic agents in connection with their work activities.
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> * * * *
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> Although [decedent] was young, he had a sufficient latency from the beginning of his firefighting career to develop lung cancer from the inhalation of burning materials. The fact that he was young with no other significant exposures, such as cigarette smoking, also weighs heavily in favor of the inciting agent coming from his regular exposure to burning materials in connection with his work as a firefighter.

> In summary, it is my opinion, held with a reasonable degree of medical certainty, that [decedent] developed carcinoma of the lung, which caused his death, and that the exposures he had as a firefighter were responsible for the development of this malignancy.

In opposition to Dr. AF's opinion, the self-insured introduced a report from Dr. GF from the Texas Occupational Medicine Institute. In his December 20, 1996, report, Dr. GF stated that medical literature has "failed to reveal a significant increase in lung cancer in firefighters." Dr. GF concluded:

> Based upon the records which you have provided and my review of the medical literature, it is my opinion that there is not sufficient evidence to opine that [decedent's] cancer was caused by an occupational carcinogen within reasonable medical probability. (Emphasis in original.)

The burden of proof is on the claimant to prove by a preponderance of the evidence that the decedent sustained an injury in the course and scope of his employment, which resulted in his death. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. Where the subject of an injury is not so scientific or technical in nature as to require expert evidence, 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 employment. Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence before him. 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. The hearing officer determined that the claimant did not sustain her burden of proving the causal connection between the decedent's cancer and his employment. The hearing officer was acting within his province as the sole judge of the evidence in accepting Dr. GF's opinion over that of Dr. AF. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of the evidence or substitute its judgment for that of the trier of fact. National Union Fire Ins. Co. 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 determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to reverse his decision on appeal. 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).

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge