APPEAL NO. 980286
FILED MARCH 30, 1998

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 in (City), Texas, on January 15, 1998, with (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) should have known that her reactive airway disease or asthma may be work related in (alleged date of injury); that she gave notice to her employer of potential work-related disease on March 17, 1997; that she did not timely notify her employer of the claimed injury; that she did not have good cause for not timely notifying the employer of the claimed disease; that the claimant's reactive airway disease or asthma is an ordinary disease of life; that the claimant did not sustain a compensable injury in the form of an occupational disease; and that since she did not sustain a compensable injury, she did not have disability. The claimant appealed, contending that the determinations of the hearing officer are so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The respondent (carrier) replied, urging that the evidence is sufficient to support the decision of the hearing officer and requesting that it be affirmed.

DECISION

We affirm.

The claimant testified and introduced 12 exhibits. The carrier called Dr. C and introduced four exhibits. The Decision and Order contains a summary of the evidence and a detailed summary will not be repeated in this decision. Briefly, the claimant testified that she began working for the employer in January 1995; that she worked in a large warehouse; and that she was exposed to fumes from forklifts and solder guns, Freon, and fiberglass insulation. She said that she started getting sick in (alleged date of injury) and that Dr. B told her that the job was making her sick and that it would be better for her to find another job. The claimant was hospitalized in February 1997 with pneumonia, was taken off work, was not returned to work by her doctors, and has not returned to work. Medical records of Dr. B, Dr. K, Dr. JG, and Dr. GG indicate that in their opinions the claimant has asthma that is caused by exposure at work. Dr. C stated that he reviewed the records of the claimant; that those opinions of the doctors are based on what the claimant told them and are not supported by diagnostic procedures; and that in his opinion in reasonable medical probability there is no relationship between the claimant's asthma, if she has asthma, and her work.

We first address the determinations related to the issue of whether the claimant sustained an occupational disease in the course and scope of her employment. 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 trier of fact may believe all, part, or none of any witness's 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). In Texas Workers' Compensation Commission Appeal No. 93010, decided February 16, 1993, the Appeals Panel affirmed a determination that the claimant did not establish that her respiratory difficulties were caused by her work and stated that expert medical evidence was required to establish a causal connection between the asthma and her employment. The hearing officer judges the credibility of witnesses and resolves conflicts and inconsistencies in the evidence. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look to all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its 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). The claimant argued that the facts in the case before us are similar to those in Texas Workers' Compensation Commission Appeal No. 94406, decided May 24, 1994. In that case, the hearing officer determined that the claimant's repeated exposure to certain chemical fumes in the workplace caused him to sustain a pulmonary injury and the Appeals Panel held that the evidence was sufficient to establish that based on reasonable medical probability that the claimant's condition occurred due to chemical exposure at work and affirmed the decision of the hearing officer. The evidence in Texas Workers' Compensation Commission Appeal No. 94404, decided May 20, 1994, is distinguishable from those in that case before us, and that a different determination could have been made based upon the same evidence is not a sufficient basis to overturn a determination of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations related to whether the claimant sustained an occupational disease in the course and scope of her employment are so against the great weight and preponderance of the evidence as to be clearly wrong or 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 those determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We next address the determinations related to the issue of whether the claimant timely notified her employer of the claimed injury. The claimant argued that in (alleged date of injury) she was told that it might be a good idea to look for another job because her job was contributing to her condition, but that reactive airway disease or asthma was not diagnosed until March 1997. Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. In Texas Workers' Compensation Commission Appeal No. 972387, decided January 5, 1998, the Appeals Panel cited earlier decisions and stated that a concrete diagnosis is not required to find a date of injury. We find the evidence to be sufficient to support the determinations of the hearing officer related to whether the claimant timely notified her employer of the claimed injury.

Finally, disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge