APPEAL NO. 980305
FILED MARCH 30, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 5, 1998, a hearing was held in (City), Texas, with (hearing officer) presiding. She determined that appellant (claimant) did not prove that her respiratory disease was work related (did not show she had an occupational disease), did not give timely notice of an alleged injury and did not show good cause for her delay in reporting, and did not have disability. Claimant asserts that she knew her respiratory condition was work related earlier than the hearing officer stated in a finding of fact, states that she had acute bronchitis related to dust in the store, and adds that the employer was notified of her hospitalization at the time it occurred in February 1997; she also states that she had disability. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer), as a salesperson in a store in (City). She began working for employer in July 1995. She testified that the employer was remodeling the store and "next to our department" an old part of the building was being torn out, causing dust. The date of inception of the remodeling was not known, but claimant said it went on for months. She added that a specific incident stands out--she was asked to clean a stock of brassieres in February; that such cleaning caused her to start coughing, sneezing, and having difficulty breathing. She then said that after work on _____ she called a doctor. On (day after date of injury), she saw Dr. K, who, claimant said, gave her medication and told her not to go to work. The date of injury set forth in the issue was _____.

Claimant stated that she was then hospitalized on February 26, 1997, where she stayed for eight days. She was told she had acute bronchitis and was again told not to work. She said she never had breathing problems before the remodeling of the store began. Claimant's last day of work was _____.

Claimant said that she notified the store the same day she was placed in the hospital by calling Mr. C, a secretary at the store. She said that Dr. K told her that her disease was work related after she was in the hospital.

Claimant agreed that Mr. C was not a supervisor. She stated that the dust at work was different than that in her house. Claimant stated that she talked to Mr. F, a manager, on May 5, 1997. Ms. C, claimant's supervisor, said that claimant had called her in February and said she was going to the doctor and, she added, Mr. C told her that claimant was in the hospital for bronchitis. She said that claimant did not tell her

what the cause was until May 1997. Mr. F said that when claimant talked to him in May, he referred her to a doctor that the store used. He also said that after this report by claimant in May, a report of injury was prepared. He said that he then talked to Mr. C about whether claimant had told him that the condition was related to work and Mr. C told him that she had not. Mr. F also said that Mr. C does not work for employer at this time.

Dr. K provided several letters addressing causation; however, none of his progress notes or hospitalization notes from the February 1997 hospitalization were provided in evidence for this hearing. In June 1997 Dr. K said that claimant had been hospitalized on February 26, 1997, for bronchitis, which he added, she had been treated "for several weeks outside our office." He stated that she had no history of this condition in the past and that she said she had been exposed to dust at work. He then said, "it seems reasonable that the exposure did trigger her bronchial problems." Then in July 1997, Dr. K provided another letter in which he again related her lack of a prior history of such respiratory condition; he said that she had:

> severe bronchial problems that seemed to coincide specifically with the job in which she was exposed to a lot [of] dust. I certainly cannot with certainty say that this is the cause, but it was certainly a time reference coincidence that did occur.

Then in September 1997, Dr. K provided a short letter in which he said that the bronchitis "was secondary to dust inhalation as an exposure at her place of employment." Claimant also provided a short note from Dr. L, who she saw in May when her employer sent her for examination. Dr. L said in July 1997 that she had reactive airway disease "which is directly work related."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She made a finding of fact that said "claimant's doctors make conclusory statements that the condition (bronchitis) is work-related; they do not confirm that the condition is work-related by the required standard." The hearing officer in her Discussion said that the medical evidence needed to address reasonable medical probability. Having made that observation, her finding of fact just quoted is interpreted to mean that the "standard" which the evidence is said not to conform to, is that of reasonable medical probability, rather than a standard that a doctor's statements have to be other than conclusory to receive any weight.

The question raised as to the effect of Dr. K's statements has been addressed before; when a doctor states that he cannot say with certainty what causation is and thereafter does say what caused the disease, the hearing officer may reasonably consider whether there are any intervening tests, studies, or other medical information provided that would show some basis for the change in opinion. When no reference is made to any intervening information and none is in the record, the hearing officer may reasonably choose to give more weight to the earlier denial of an ability to identify

causation than to the later statement of causation. The short note of Dr. L is not, however, contradicted by any of his prior statements or notes. In addition, Dr. L was not a doctor chosen by the claimant. A fact finder may, however, choose to question, or not question, such short opinions of a doctor that do not provide any explanation. *See generally,* Gregory v. Texas Employers Insurance Association, 530 S.W.2d 105 (Tex. 1975), and Charter Oak Fire Insurance Company v Levine, 736 S.W.2d 931 (Tex. App.-Beaumont 1987, writ ref'd n.r.e.).

The Appeals Panel will only overturn a finding of fact when it is against the great weight and preponderance of the evidence; in this case, that standard has not been reached by the evidence provided. The evidence therefore sufficiently supports the determination that claimant did not show that her bronchitis or reactive airways disease, of either February 19 or February 26, 1997, was work related and therefore did not show that she had an occupational disease.

The supervisors, who testified, consistently indicated that claimant did not say her problem was work related until May 1997, although they agreed that claimant had informed the employer of needing to see a doctor and being hospitalized in February 1997. Notice of sickness that does not indicate it stemmed from the job does not generally constitute adequate notice. *See* Universal Underwriters Ins. Co. v. Pierce, 795 S.W.2d 771 (Tex. App.-Houston [1st Dist] 1990, no writ). While claimant indicated that she provided notice in February, this conflict in the evidence was for the hearing officer to resolve. *See* Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). Having resolved it by finding that claimant did not give timely notice, the Appeals Panel does not find a basis for reversal. In addition, no evidence of good cause for not providing notice up to the time a supervisor received notice in May 1997 was not brought forward. Therefore the determination that notice was not timely and no good cause wa snot shown for delay until the notice was given cannot be said to be an arbitrary determination, and it is sufficiently supported by the evidence.

With no compensable injury, there can be no disability under the 1989 Act. *See* Section 401.011(16).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

Christopher L. Rhodes
Appeals Judge