APPEAL NO. 980431

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 December 19, 1997, with a hearing officer. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury and that he did not have disability. In his appeal, the claimant argues that those determinations are against the great weight and preponderance of the evidence. In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The claimant testified that he began working as an inspector at the self-insured's wastewater disposal facility in 1994. He stated that in that job he ensures that nothing illegal is being dumped into the facility by periodically taking samples of the contents of the septic trucks and sending it for testing. He testified that there is a strong odor of rotten eggs at the facility and that he has had problems with headaches as a result of the smell since shortly after he began working as an inspector. He testified that he worked from 7:45 a.m. to 5:30 or 6:00 p.m., Monday through Friday and from 9:00 a.m. to 1:00 p.m., Saturday. He stated that the metal objects in his workplace are corroded and introduced photographs depicting his work environment, which show the corrosion. He further testified that the office where he works does not have a ventilation system, that the windows are bulletproof glass and do not open, and that the air conditioning never worked. He testified that he is required to turn on the exhaust fan in the area where the septic trucks unload and that the fan often did not work. Similarly, he testified that neither the alarm systems in his office or the bay, which monitor the chemical exposure levels, were operational. He stated that in April or May 1997 he became more concerned with his health because he developed pneumonia. He testified that on July 11, 1997, he was given a belt monitor to wear, which he understood would sound when he was exposed to dangerous levels of chemicals. He stated that the alarm on his belt went off several times between July 11th and July 15th, when his physical condition deteriorated to the point that he stopped working. He stated that the alarm sounded when he was inside his office and when he was outside in the bay where the trucks empty their loads. The claimant testified that his symptoms include headaches, nausea, weakness in his arms and legs, weight loss, difficulty sleeping, loss of his sense of smell and memory loss. He stated that his symptoms continued through the date of the hearing and that he has not had significant improvement even though he is no longer working and his exposure has ended.

(Mr. B), the environmental compliance manager for the water utility, testified that the monitors in the bay area where the trucks dump the waste were installed when the plant

was constructed and that they have been operational, except for short periods of time when the sensors in the monitors were damaged by water used in cleaning the bay area. He looked at the pictures of the claimant's workplace admitted in evidence and indicated that the corrosion depicted in those photographs was not consistent with exposure to hydrogen sulfide because it was not dark. He testified that the testing, which was designed to measure an employee's total exposure to hydrogen sulfide at the plant where the claimant worked, had never demonstrated levels in excess of the Occupational Safety and Health Administration standard, which he stated was 10 parts per million (ppm). He testified that the personal monitors measure hydrogen sulfide, carbon monoxide and other hydrocarbons. He stated that the unit sounds when the detector senses a concentration of the vapor, which is likely to cause an explosive environment. He testified that hydrogen sulfide would create an explosive environment at 25 ppm. He stated that he had no knowledge of whether the claimant's monitor was properly calibrated or whether it was actually sounding in the period from July 11 to July 15, 1997. He testified that no other employee except the claimant has indicated that their monitor was going off at that time. On cross-examination, Mr. B stated that if the monitor went off when it was properly calibrated, it would indicate that the claimant had been exposed to unsafe levels of those chemicals.

The claimant's treating doctor is (Dr. B). Dr. B has diagnosed chemical intoxication, migraine headaches, vertigo, anxiety and depression, insomnia, bronchitis, tearing of the eyes, weight loss, and paresthesia weakness of the upper and lower extremities. The claimant's July 23, 1997, chest x-ray was normal. EMG and NCV testing of the same date suggested possible S1 nerve root dysfunction or a motor polyneuropathy. On July 27, 1997, the claimant underwent pulmonary function testing, which revealed spirometry within normal limits, lung volumes within normal limits and diffusion capacity within normal limits. The pulmonary function report also indicates that the claimant denied shortness of breath and dizziness. Evoked potential and EEG testing of August 8, 1997, was also reported as normal. Dr. B referred the claimant to (Dr. Mc), an assistant professor in the Clinic at a university hospital. In his report of November 10, 1997, Dr. Mc states "[g]iven the description of [claimant's] workplace, my initial impression is that he had a significant exposure to hydrogen sulfide." Dr. Mc concluded that "[i]t appears that it is highly probable that his symptoms are related to hydrogen sulfide and that his exposure is work related." In addition, Dr. Mc stated that it is doubtful that the claimant will obtain a full recovery because of the persistence of his symptoms for months following his last exposure. (Dr. C) conducted a records review for the self-insured. In his report of September 26, 1997, Dr. C noted that "[o]rdinarily, exposure to hydrogen sulfide sufficient to cause minimal symptoms of headache, eye irritation and weakness but not sufficient to cause unconsciousness result in recovery within 24 to 48 hours." Dr. C concluded:

> In reasonable medical probability, hydrogen sulfide fails to account for any aspect of this patient's continuing clinical presentation.

> Monitoring for hydrogen sulfide in the patient's workplace fails to identify hazardous levels. Monitoring procedures appear to be consistent with usual and ordinary industrial hygiene practices.
>
> In response to specific questions posed, there is no evidence that the claimant was exposed to noxious elements. There is no evidence that the claimant sustained any injury from fumes. His current medical condition is unrelated to any workplace exposure to toxic substances.

(Dr. M) also conducted a records review for the self-insured. In a report dated September 23, 1997, Dr. M noted that the claimant's laboratory testing was normal and concluded that "[t]he patient's complaints are mostly subjective and from the medical information listed, I cannot see that the patient suffered any permanent damage." Dr. M also noted that the claimant's symptomatology should have cleared after his exposure stopped and that had not happened with the claimant. In a letter dated December 12, 1997, Dr. C criticizes Dr. Mc's conclusions because they are based upon exposure to hydrogen sulfide at levels subjectively described by the claimant, which has not been verified in testing of the workplace environment.

In order to sustain his burden of proving a compensable occupational disease, the claimant must "demonstrate a causal connection between his employment and the disease; that is, the disease must either be indigenous to the employment or present in an increased degree." Texas Workers' Compensation Commission Appeal No. 94082, decided March 4, 1994. In this instance, the crucial questions are whether claimant has established that he was exposed to hydrogen sulfide at work and whether he has demonstrated a causal connection between his exposure and his injuries. Claimant has the burden of proving causation, by a preponderance of the evidence. Appeal No. 94082, *supra*. We have noted on many occasions that where, as here, the matter of causation is outside common experience expert testimony is required to establish that the disease is causally connected to the employment. Texas Workers' Compensation Commission Appeal No. 93939, decided November 24, 1993.

The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer judges the weight and credibility of both lay and expert testimony and evidence and resolves such conflicts and inconsistencies as exist therein. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, there were conflicts and inconsistencies both with respect to claimant's diagnoses and as to the causal connection, if any, between his condition and his alleged exposure to hydrogen sulfide at work. It was for the hearing officer, as the trier of fact, to resolve those conflicts and inconsistencies and to determine whether the claimant sustained his burden of proving a compensable occupational disease

injury. The hearing officer determined that claimant did not sustain his burden of proving that his symptoms were the result of his exposure to high levels of hydrogen sulfide, that he did not prove a causal connection between his symptoms and the exposure to chemicals at work, and that the claimant did not sustain a compensable occupational disease injury. Thus, he resolved the conflicts and inconsistencies in favor of a determination that claimant did not sufficiently demonstrate the causal connection between his alleged exposure to hydrogen sulfide at work and his medical condition. The hearing officer was acting within his province as the finder of fact in so finding. Our review indicates that the hearing officer's determination is supported by sufficient evidence and nothing indicates that it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no basis exists for reversing the finding that claimant did not sustain a compensable occupational disease injury on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability because the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge