APPEAL NO. 990032

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 16, 1998, a contested case hearing (CCH) was held. With respect to the issues before her, the hearing officer determined that respondent (claimant) sustained a compensable occupational disease injury (hepatitis B) and that the date of injury is _____. Appellant (carrier) appealed, contending that these determinations are not supported by the evidence. Claimant responded that she agrees with the hearing officer's determinations.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable occupational disease injury in the form of hepatitis B. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as damage or harm to the physical structure of the body and disease that naturally results from the damage or harm. Section 401.011(26). The definition of "injury" includes occupational diseases. An occupational disease is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "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." Section 401.011(34). To establish that she has an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Whether the necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994. Medical experts need not use "magic words" to establish the necessary causal link. Texas Workers' Compensation Commission Appeal No. 950631, decided May 25, 1995. "Causation can be found where: (1) general experience or common sense dictate that reasonable men know, or can anticipate, that an event is generally followed by another event; (2) there is a scientific generalization, a sharp categorical law which theorizes that a result is always directly traceable back to a cause; or (3) probabilities of causation articulated by scientific experts are sufficient and more than mere coincidence." Texas Workers' Compensation Commission Appeal No. 91004, decided August 14, 1991. Our appellate standard of review is set forth in Texas Workers' Compensation Commission Appeal No. 951581, decided October 30, 1995, and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant testified that she worked for (employer) as a journeyman meter technician (technician). She said that in 1996 and 1997 she was sometimes required to go into

underdeveloped areas where people lived without sewer service or with damaged septic tanks, and some raw sewage water contacted her arms and hands when she was not wearing gloves. She testified that she had small nicks on her hands and arms from using wire while working. Claimant testified that, at one point, after working in an area where there was raw sewage water, she washed her tools and truck with a chlorine cleaner. Claimant said she became concerned because she felt "out of balance," and on _____, she asked to be tested for hepatitis. She was tested in April 1997 and on April 16, 1997, she was told she had tested positive for hepatitis B. There was medical evidence that claimant's hepatitis B was in the early acute phase in April 1997. Claimant testified that, as far as she knew, her mother did not have hepatitis. She said her partner of eight years had been tested and that his test was negative. Claimant denied being an intravenous drug user and said she has been in a monogamous relationship for eight years. Claimant said that she used to travel to a border city in (country B), but that she has not done so for several years.

The hearing officer was the sole judge of the credibility of the evidence and she decided what weight to give the evidence in this case. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We have reviewed the evidence and we find no error in the hearing officer's determinations. The hearing officer reviewed and judged the credibility of the medical evidence and decided what weight to give to it. She determined that claimant's hepatitis B is a compensable occupational disease injury. There was conflicting medical evidence regarding whether claimant sustained a compensable injury. There was medical evidence in the form of a letter signed by Dr. S that stated that claimant was seen after "exposure to sewage water," and that "the possibility of developing Hepatitis B with exposure to contaminated sewage is indeed great." In an April 29, 1998, letter, Dr. T noted that claimant had worked in an underdeveloped neighborhood; that her 1996 chemistry panel, which included liver function testing, had been normal; that it appears that claimant developed the disease after December 1996, and that it "would be logical to assume that she acquired this disease during her employment." A November 12, 1998, letter from Dr. T stated that, "It is my opinion that [claimant] did contract Hepatitis B during the course of her employment . . . ." We note that there was an article dated in 1995 from the (hospital) that indicated that hepatitis A is transmitted by exposure to fecally contaminated water and hepatitis B may be transmitted by contact with blood, sexual contact, intravenous drug use, and also during birth. However, this was for the hearing officer to consider in resolving the fact issue in this case. She could consider that article, along with the medical opinions regarding causation, in deciding the issues in this case. We have reviewed the medical evidence in this case, including the medical evidence and articles emphasized by carrier. We will not substitute our judgment for the hearing officer's because the challenged determination is not against the great weight and preponderance of the evidence. Cain, *supra*.

Carrier contends that causation in this case must be proved by expert medical evidence that meets the standards enunciated by the Texas Supreme Court in Merrell Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997). First, we observe that Havner concerned the exclusion of evidence after a proper objection that the offered expert

testimony lacks reliability. In the case before us, carrier stated that it had no objection to claimant's exhibits. Further, Havner is not a workers' compensation case, but is a civil tort case tried in conformity with the Texas Rules of Civil Evidence. In several Appeals Panel decisions, we have noted that Havner and E.I. du Pont Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995) were cited as authority for the proposition that a doctor was not qualified to give an opinion on medical causation. Havner and Robinson were cases based upon the requirements of Rule 702 of the Texas Rules of Evidence. Section 410.165(a) specifically states that "conformity to legal rules of evidence is not necessary." Further, rather than providing for the exclusion of evidence, Section 410.165(a) provides that a hearing officer "shall accept all written reports signed by a health care provider." *See also* Texas Workers' Compensation Commission Appeal No. 972493, decided January 16, 1998 (Unpublished).

Carrier also cites Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980) in support of its position. In Schaefer, the court noted that there was no evidence that the particular strain of tuberculosis that the employee had was in the soil where he had worked. In the case before us, there was medical evidence that the possibility of developing hepatitis B with exposure to contaminated sewage is "great." The hearing officer could find from claimant's testimony that she was exposed to raw sewage. From the evidence in this case, the hearing officer could determine that claimant was exposed to raw sewage water while at work, that she thus risked exposure to hepatitis B, and that she contracted Hepatitis B while in the course and scope of employment. We perceive no error.

Carrier also challenged the determination regarding the date of injury. There was no timely notice issue in this case and carrier presented no argument regarding another date when claimant knew or should have known that her injury may be related to her employment. Claimant testified that on _____, she worried that she had been in raw sewage at work and felt something was wrong with her health, and so she asked her supervisor for hepatitis testing. This is some evidence supporting the hearing officer's determination in this regard.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge