

APPEAL NO. 990211

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 19, 1999. The issue reported out of the benefit review conference was: Are the appellant's (claimant) current conditions including Epstein-Barr virus, reflux esophagitis, vestibular, visual dysfunction, vertigo and ischemia a result of the compensable injury of toxic exposure sustained on or about _____? The hearing officer found that these conditions were not the result of the "compensable injury of toxic exposure sustained on or about _____." The claimant appeals this determination, expressing her disagreement with it. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Reversed and remanded.

The claimant worked as a building cleaner. She testified that on _____, she was exposed to the fumes of a new toilet bowl cleaner which caused her to black out and experience coughing and dizziness. She testified that the carrier paid for her medical treatment for these conditions up to "October." We presume, in the absence of clarifying evidence, that this was October 1998, and that this refusal became the catalyst for these proceedings.

The parties entered into the normal stipulations at the CCH regarding venue, the employment relationship, and workers' compensation coverage. The hearing officer asked the claimant what her injury was on _____, and she responded "bronchitis." The carrier, however, explicitly refused to stipulate to any compensable injury and, in our opinion, proceeded to try the case as if the issue were whether the claimant sustained a compensable injury at all. The Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) filed by the carrier on October 8, 1998, states: "Carrier disputes entitlement to medical, indemnity benefits and mileage per attached peer review. Reviewer found that further medical treatment is not related to [claimant's] _____ chemical exposure. Peer reviewer found treatment for Epstein Barr virus, reflux esophagitis, vestibular, visual dysfunction and ischemia not related or necessary."

The hearing officer made the following Findings of Fact and Conclusion of Law:

FINDINGS OF FACT

2. Claimant was exposed to hydrochloric acid contained in a toilet bowl cleanser.
3. On _____, [Dr. H] diagnosed Claimant with bronchitis due to chemicals.

4. On May 30, 1995, pulmonary function studies performed at Pulmonologist, [Dr. S] request were normal.
5. [Dr. G] diagnosed Claimant with industrial asthma, hypersensitivity reaction, headaches and fatigue syndrome.
6. On August 9, 1995, [Dr. C] diagnosed Claimant with Epstein-Barr virus which is not work related.
7. Based upon reasonable medical probability toxicologist [Dr. C] opined that there is no causal connection between Claimant's exposure to hydrochloric acid on _____, 1998 [sic, _____] and Claimant's symptoms.

CONCLUSION OF LAW

3. The Claimant's current conditions including Epstein-Barr virus, reflux esophagitis, vestibular, visual dysfunction, vertigo and ischemia are not a result of the compensable injury of toxic exposure sustained on or about _____.

In a series of cases, the Appeals Panel addressed the question of whether so-called "current condition" cases, in fact, presented an issue of reasonably required medical care over which the division of Medical Review had jurisdiction or whether the issue was one of extent of injury over which the Hearings Division had jurisdiction. See Texas Workers' Compensation Commission Appeal No. 990076, decided February 25, 1999; Texas Workers' Compensation Commission Appeal No. 981220, decided July 15, 1998; Texas Workers' Compensation Commission Appeal No. 981133, decided July 15, 1998; Texas Workers' Compensation Commission Appeal No. 981110, decided July 10, 1998; Texas Workers' Compensation Commission Appeal No. 981017, decided July 1, 1998; and Texas Workers' Compensation Commission Appeal No. 971653, decided October 2, 1997. In Appeal No. 981220, *supra*, we commented that "[i]n cases such as this, it is not the phrasing of the issue that controls whether a dispute can be properly resolved in the Hearings Division. Rather, that question turns on the nature of the dispute, and more specifically, whether compensability or eligibility for, or the amount of, income or death benefits is at issue." Thus, in Appeal No. 981017, *supra*, we examined the TWCC-21 and Notice of Medical Payment Dispute (TWCC-62) filed by the carrier and concluded that "the only dispute it is pursuing concerns the claimant's entitlement to medical treatment"

In the case we now consider, the issue is framed in terms of whether the current conditions are the result of a prior injury. We have no way of knowing what the prior injury was, however, because the parties did not stipulate to the original injury; the hearing officer made no findings of what that injury was; and the carrier seems to have proceeded under a theory that there was no original injury. Injury is defined as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the

damage or harm." Section 401.011(26). "Toxic exposure" does not in itself meet this definition of injury. A finding of fact as to what a doctor believes or diagnoses is not equivalent to a finding of causation or that a claimant has that injury.

We believe that a specific finding which identifies the original compensable injury was essential to determining whether the Hearings Division had jurisdiction of this case, that is, whether this was an extent or injury case or a medical care case. For this reason, we reverse the decision of the hearing officer and remand this case for further findings, and development of the evidence as appropriate, of the compensable injury sustained by the claimant on _____. In this regard, simple findings of a doctor's diagnoses or opinion of causation should be avoided in favor of findings of the existence, or not, of an injury. Once this finding is made, the hearing officer should make a further determination of jurisdiction in light of the cases cited above. If jurisdiction is found, the hearing officer should then make further findings that the compensable injury did or did not extend to the claimed current injuries or that the current injuries did or did not naturally result from the original compensable injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge