

APPEAL NO. 990710

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 14, 1999, a hearing was held. He (hearing officer) determined that the appellant's (claimant) "date of injury," the date that claimant knew or should have known that his work may be the basis for his condition, was _____, that he gave notice to respondent (carrier) on March 25, 1998, that claimant did not sustain a compensable injury on _____, and that claimant did not have disability. Claimant asserts that he did sustain an injury, citing medical evidence and statements provided by other employees concerning how the work was conducted. Claimant attached documents to his appeal; those documents not admitted at the hearing will not be considered because there was no showing that they could not have been produced at the hearing. Carrier replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on December 1, 1997. Claimant testified that he worked for about 15 days intermittently from December 1, 1997, to December 31, 1997, with Sikatop, a powder which was mixed with water, and which contained cement; he also referred to a liquid form of Sikatop. Claimant stated that he was "not fully aware of his injuries" until _____. That is the date the hearing officer found as the date of injury, which is not appealed. With the date of injury of _____, notice was found to have been provided on March 25, 1998, and that determination was also not appealed. The appealed issues tried at the hearing related to whether there was a compensable injury and disability.

Claimant stated that he suffered respiratory problems, nerve damage, possible encephalopathy, and possible chemical sensitivity syndrome. Evidence was presented that the Sikatop powder was mixed in buckets by individual workers with their unmasked faces in close proximity to the bucket and that dust from the powder rose up to be breathed during the mixing process. Claimant saw Dr. W, who stated in May 1998 that claimant provided a history of having worked "with caustic materials for about fifteen days which spilled on his hands and fingertips"; Dr. W also said claimant washed his hands 20 times a day, but still felt burning and his skin peeled. Dr. W alluded to sensitivity testing by pinprick but did not mention any testing of the "caustic materials" and did not identify what that material was said to be. Dr. W also mentioned added testing that should be done, but there is no evidence of such testing or test results.

Dr. W referred claimant to Dr. F. Dr. F considered claimant's information about his condition and Dr. W's concern about ammonia (the subject of another hearing that is of no relevance to this review). Dr. F found reactive airways disease due to ammonia. He found no ventilatory defect, and normal lung diffusion capacity but did find a bronchodilator response "suggestive of" reactive airways disease. He concluded however, that claimant

did not sustain a "parenchymal lung injury," noting x-ray and forced vital capacity to be normal. No mention of Sikatop, cement, oil, or ferrogard was even mentioned by Dr. F.

Dr. K provided a review for carrier which considered claimant's statement, other witness statements, the reports of Dr. W and Dr. F, and other reports of investigation. Dr. K's conclusions were primarily directed at ammonia (the subject of another hearing), but he did note that claimant had been terminated and said claimant's own reports "to various federal agencies" indicated that "health claims" were made "in the process of his rage against his employer." Dr. K did not find a reactive airways dysfunction. He did find that claimant was exposed to "ammonia and a sealing cement that appear[s] inconsequential in relation to any continuing valid long term health effects." He also noted the absence of any "positive objective findings that diagnose any respiratory problem."

Claimant also provided OSHA information sheets which show what irritation is caused by the Sikatop powder he complained of. One witness, JH, testified that he mixed the powder claimant described while working for employer. He said that he was diagnosed with lung cancer in March 1998; he said he had no problems until about two or three months after he quit using the Sikatop, which he said he used for a "long time."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He assigns weight to evidence and determines which medical evidence should be given more weight when there is any conflict in the evidence. See Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997. The hearing officer could question Dr. W's statements since no caustic agent was even identified and no laboratory testing was cited. He could give little weight to Dr. F's opinion in this case because Dr. F only dealt with ammonia. He could consider the OSHA data provided by claimant about Sikatop as alone providing no causative proof relating to claimant's allegations of respiratory problems, nerve damage, encephalopathy or chemical sensitivity. While Dr. K's opinion found no injury from the sealing cement, the hearing officer stated that he gave no more weight to it than to Dr. W's opinion because Dr. K also did not mention "Sikatop." Since the burden of proof was upon the claimant, the determination that claimant did not sustain toxic encephalopathy, toxic neuropathy and chemical sensitivity "or any other injury" due to Sikatop or oils at work and did not sustain a compensable injury on _____, is sufficiently supported by the evidence.

With no compensable injury there can be no disability. 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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge