

APPEAL NO. 991024

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 April 20, 1999. The issues concerned whether the appellant, who is the claimant, sustained an injury in the course and scope of employment, and whether he had the inability to obtain and retain employment equivalent to his preinjury average weekly wage as the result of a compensable injury (*i.e.*, disability).

The hearing officer determined that the claimant did not injure his genitalia from an alleged chemical spill on _____, in the course and scope of employment and did not sustain a compensable injury. The hearing officer found that any inability to work between (a day after date of injury) and March 16, 1998, was not due to the claimed injury and, consequently, there was no disability.

The claimant has appealed, arguing that the decision of the hearing officer is against the great weight and preponderance of the evidence. Facts in support of injury and disability are recited in the appeal. The respondent (carrier) responds that the decision is sufficiently supported by the evidence and should be affirmed.

DECISION

Affirmed.

The hearing officer has done a comprehensive job at thoroughly setting out the evidence, which we incorporate herein. The claimant was employed by (employer) and said that on _____, as he was cleaning a pipe with a rag and solvent, he spilled some of the solvent on his pants, which he said were then "saturated." He finished the day and went home and when he took a bath, he said he felt stinging. Asked what he meant by "spill," he indicated only that because he was holding the pipe close to him, some solvent went onto his pants. He was standing up at the time and feeding the pipe horizontally into a machine as he cleaned it. The bucket in which the solvent was contained did not tip over, but simply seeped off the rag onto his trousers. During cross-examination, the claimant said that it was when he was bathing on (a day after date of injury) that he noticed the stinging sensation.

The claimant went to the emergency room early in the morning hours of _____ (later he said the (a day after date of injury)), complaining of genital burning and itching. To greatly summarize the medical evidence, the claimant was admitted to the hospital for scrotal exploratory surgery. The doctor who treated him, Dr. C, was of the opinion that the claimant had an infection in this area, from which bacteria and strep was cultured. He noted that the claimant reported discharge and swelling over the past two days. Dr. C's records reflect confirmation of a staph infection of the entire genital area.

The claimant also had multiple follow-up debridement surgery beginning the week after his hospital discharge, and then a skin graft in February 1998. Necrotic tissue was found and removed as part of the debridement procedure. After two inquiries from the Texas Workers' Compensation Commission, Dr. C first said that a chemical spill could have contributed to the claimant's condition, and then, in September 1998, Dr. C rendered an opinion that cellulitis and soft tissue abscess was, in all medical probability, the result of a chemical spill onto the claimant's scrotum. There was no evidence that any other part of the claimant's body was so affected.

The material data safety sheet (MSDS) for the mineral spirits shows the hazardous component to be naphtha. The sheet recommends that if clothing is "soaked," it should be removed and the affected area washed with soap and water. Side effects of contact are noted as "acute: irritation; chronic dermatitis."

Dr. K, a toxicologist for the carrier, reviewed the MSDS and medical records. Dr. K said that the condition developed by the claimant was known as Fournier's gangrene, an infection of unknown specific cause. Dr. K said a review of the literature indicated no association of this condition with solvent or chemical exposures. The excerpts attached by Dr. K to his report do indicate that the portal of entry for bacteria can be an abrasion or a burn. The attachments also indicate that sitting too long can lead to development of pressure sores which become a portal of entry. It can also result from perianal infections. The articles describe numerous underlying diseases, such as diabetes, that can predispose to development of Fournier's gangrene.

The claimant's daughter and coworker, who no longer worked for the employer, testified that, when the solvent in question would splash on her arm or face, it would itch and cause irritation. She said that when she and her father rode home together the night of the incident, he just mentioned that he had gotten wet on his pants.

The production supervisor, Mr. B, stated that the solvent used consisted of mineral spirits. Mr. B said that rubber gloves and protective aprons are available for use. He testified that he was aware of another employee who spilled the solvent on his entire lower abdominal area and did not have adverse effects. The claimant said he was released back to work on March 16, 1998, but did not actually return to work (for another employer) until May 4, 1998.

Exposure to toxic chemicals and the resultant effect on the body are matters beyond common experience, and medical evidence should be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. See Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992; Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993. In this case, the medical evidence was conflicting. The hearing officer could consider that Dr. C's earlier opinions

did not attribute the condition to the suggested spill by the claimant. Moreover, the hearing officer could consider the claimant's description of what he did and evaluate the likelihood of the chemical in question coming into contact with the scrotal area. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). Although the record here would lend itself to different inferences, the decision should not be set aside because different inferences and conclusions may be drawn upon review. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). We cannot agree that the resolution of the evidence by the hearing officer in this case is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust.

When there is no finding of a compensable injury, an essential part of the finding of disability is not present. The hearing officer's finding that the alleged injury did not cause a loss of ability to obtain and retain employment is supported by the evidence. For these reasons, we affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge