APPEAL NO. 991025

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 21, 1999. The hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease on _____, and did not have disability. The claimant appeals these determinations, expressing his disagreement and citing evidence that he believes supports his position. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a sandblaster. He testified that he did this at least eight hours per day and sometimes up to 13 hours per day. He said that the protective mask he was given was inferior and that he was constantly inhaling air contaminated with dust and oil. He said the oil came from the compressor machine used to provide air to the mask. On or about _____, he said, he felt chest pain and began coughing up blood. Mr. B, the plant manager, testified that the claimant typically spent no more than five and one-half to six hours per day sandblasting and that filtered air was provided through a mask.

The claimant was first seen by Dr. T, who diagnosed a bacterial infection and prescribed antibiotics. Dr. T referred the claimant to Dr. P, an internal medicine specialist. Dr. P referred the claimant to a lung specialist and commented that "[i]t was high [sic] likely that his complains were related to inhalation of dust." Dr. B diagnosed chemical induced bronchitis "caused by his employment, inhalation of dusty air while working as a Sand Blaster." He emphasized that this was not silicosis. In a report of April 10, 1997, Dr. S wrote that the blood in the claimant's sputum "very well could be related to the long-term sequella of sandblaster's lung." Chest x-rays on this date were normal. Dr. J, apparently the claimant's treating doctor, diagnosed chemically-induced bronchitis.

On July 3, 1997, the Texas Workers' Compensation Commission appointed Dr. C, an independent medical examiner, "to determine whether the claimant's pulmonary condition was caused by his employment as a sandblaster or whether he is suffering from an unrelated condition." Dr. C reviewed the claimant's medical records and examined him on July 29, 1997. He noted that prior bronchoscopy was unremarkable and that it had not been determined whether the source of the blood was the mouth or the sinuses. Pulmonary testing, in his opinion, did not meet acceptable criteria. He concluded from these tests and his examination that "there is no evidence whatsoever of any lung disease associated with sandblasting. The patient certainly does not have acute silicosis, nor does he have any other evidence of silicosis or occupational lung disorder." Dr. M reviewed the claimant's medical records. He concluded that it was not medically probable that any of the claimant's "current pulmonary disability is in any way associated with work factors . . ." because (1) there was no substantiated diagnosis of silicosis, (2) there were no chest x-

rays consistent with silicosis, and (3) if his current pulmonary difficulties were associated with his work activities, his condition would have improved after the exposure ceased. He considered the claimant's condition to most likely be caused by an upper respiratory tract infection. In a later report in response to Dr. J's diagnosis of chemically-induced bronchitis, Dr. M stated that he did not believe such condition was related to the workplace because if it were, removal from the workplace would have resolved the symptoms. He believed the claimant had an infectious bronchitis, not an occupationally or chemically induced bronchitis.

Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." The claimant had the burden of proving that he sustained a lung injury at work, either by way of exposure to dust or to chemicals. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide and required in this case proof by expert evidence to a reasonable degree of medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The claimant initially asserted a silicosis injury from inhalation of dust particles. The medical evidence uniformly found no silicosis. The claimant also suggested that his bronchitis was caused by the inhalation of chemicals. The only chemical he described was oil. His treating and referral doctors, particularly Dr. J and Dr. B, attributed this condition to the work environment in a somewhat conclusory fashion. Dr. C, on the other hand, found, based on his examination of the claimant and various tests, that the claimant showed no evidence of damage to the claimant's lungs or airways. Dr. M concurred in this opinion, but found some pulmonary problems which he could not attribute to the workplace. The hearing officer was the sole judge of the weight and credibility of this evidence. Section 410.165(a). He found Dr. C's opinion more persuasive and concluded that the claimant did not establish an occupational disease or that he was exposed to chemicals at work other than dust from the sandblasting. In his appeal of this determination, the claimant argues that his various doctors established that his lung injury was caused by sandblasting at work and that he did this more than the four to five and one-half hours per day that the hearing officer found. Ultimately, this case came down to a dispute among experts. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective experts for that of the hearing officer. Rather, we find the opinion of Dr. C and Dr. M, deemed credible and persuasive by the hearing officer, sufficient to support his determination that the claimant did not sustain an occupational disease.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge