APPEAL NO. 991037

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On April 20, 1999, a hearing was held. He determined that the respondent (claimant) sustained a compensable injury on _____, and had disability from September 29, 1998, through January 18, 1999. Appellant (carrier) asserts that there is no medical evidence, based on reasonable medical probability, in support of the determination, and it cites medical evidence indicating that an accident at work did not cause claimant's condition. Carrier refers to claimant's medical evidence as conclusory and changing from a "possibility" to a stronger statement for no reason. Carrier also states that any symptoms from a chemical exposure would have ceased after several hours, so there can be no disability. Finally, carrier states that it was error to exclude their expert from the hearing. The appeals file discloses no reply from claimant.

DECISION

We affirm.

Claimant testified that she worked in a dialysis unit in which renal patients received treatment; the employer is (employers), Incorporated. Claimant testified that she was cleaning up blood with a bleach solution on _____, when some renalin spilled, mixing with the bleach solution and creating chlorine gas. Claimant inhaled some of that gas and left work within an hour. She went to an emergency room, setting in motion admittance to the hospital where she stayed for about a week. Claimant testified to a prior inhalation of the same mixture, two years previously in September 1996. At that time, she stayed in a hospital for several weeks. The medical records from that hospitalization show that she had mycoplasma pneumonia.

Claimant testified that she had worked as a patient care technician regarding patients who repeatedly had dialysis. Part of her duties prior to September 1996 included cleaning equipment used in the process. Renalin was used to do this cleaning; it contains acids which can mix with products, such as bleach, to cause chlorine gas. Claimant testified that water bleach solutions were also used where she worked for cleaning. She stated that after her experience in September 1996 when she eventually returned to work, she was assigned to patient care that omitted some of the cleaning requirements she previously had. On _____, claimant stated that a leakage of blood behind a machine in a narrow space caused her to clean it up with the bleach solution. Not clearly explained was how renalin was spilled at that time so as to create a mixture. At any rate, claimant described the mixture as producing a smoky area that rose approximately six inches above the floor.

In 1996 claimant was treated by many physicians when hospitalized but her treating doctor appears to have been Dr. W. She said that she did not return to him after her recovery in 1996 until the accident of 1998. The evidence in this case primarily conflicted in

regard to the opinions of Dr. W, indicating that the chlorine gas was a cause of injury, and Dr. B, a pulmonary specialist, who provided a statement and testimony that it was not. No one at the hearing disputed that bleach and renalin together can produce chlorine gas.

Dr. B provided testimony that appeared to be measured and authoritative; he would not provide opinions in any area in which he stated he was limited or in which sufficient facts were not available. Dr. B testified that exposure to chlorine gas would also result in eye and nose irritation. Claimant's records showed neither. Dr. B said that without indications of these symptoms, claimant did not have a significant exposure. Studies of "significant" inhalation showed that over 90% of the subjects were free of symptoms after six hours. (Dr. H did describe a railroad car accident in which some people, who were nearby, were killed by escaping chlorine gas, and he also referred to chlorine gas use in World War I.) Dr. B also placed significance on claimant's history in September 1998 of having had flu-like symptoms just before the _____, exposure. He stated that all relevant information had to be considered in arriving at claimant's problem, not just the history of her exposure to a spill on _____. He noted that x-rays after the September 1998 incident showed little change in claimant's lungs as compared to x-rays after the 1996 hospitalization. He also noted that claimant was given antibiotics in 1998 and said there was no reason to give antibiotics for a chlorine gas inhalation. He stated that one of claimant's problems, shortness of breath, can be caused by many different things, including heart trouble and obesity.

Carrier also pointed out that Dr. W is not a pulmonary specialist, but that Dr. W did refer claimant to Dr. K, who is such a specialist, adding that Dr. K did not say that chlorine gas was the cause of any injury to claimant. Claimant, in her testimony, denied that she had flu or a fever immediately before the _____, inhalation, saying that her son had, implying that her history had been misinterpreted and was not accurate as recorded in medical records.

Carrier states that Dr. W, on October 22, 1998, had written in terms of a "possibility" in regard to chlorine gas, while he then said on January 8, 1999, that he was "convinced that this exposure was an underlying cause" and added that he did not provide an explanation as to how he arrived at this juncture from his earlier statement. The records of Dr. W show that on September 29, 1998, when claimant was hospitalized, Dr. W said that claimant related exposure to a mixture of renalin and bleach with "severe respiratory problems"; he also referred to the exposure two years before. (He did not refer to chlorine gas at this time.) He did prescribe antibiotics but also prescribed inhalers. Dr. K noted on October 2, 1998, that the "exact cause of her 'pneumonia' is definitely not apparent." He added that he would continue antibiotic therapy. Dr. W wrote in a progress note on October 16, 1998, prior to the October 22, 1998, letter that used the word "possibility," that claimant had been exposed to the mixture of renalin and bleach (without mentioning chlorine gas) and became sick within 15 to 20 minutes. He stated on October 16, 1998, that her problems were "severe pulm. disease and excess wt." He drew an arrow from the "severe pulm. disease" to another handwritten comment which said "prob. due to chemical exposure."

When Dr. W used the word "possibility" later, on October 22nd, he appears to have stated for the first time that the mixture of renalin and bleach "is known to release chlorine gas." He did not explain why he, at that time aware of chlorine gas, believed that there was only a possibility when he had previously thought the relationship was more clearly evident. In addition, when Dr. W provided a discharge note on November 4, 1998, referring to her discharge from the hospital on October 7, 1998, he had also said that pulmonary symptoms were "possibly aggravated or caused" by the renalin-bleach mixture, after stating in that narrative that such mixture produces chlorine gas.

Dr. W's October 22, 1998, letter used the word "possibility" in the context of, "I am uncertain whether there is an element of other underlying pulmonary difficulty, but the time frame of her significant difficulty following exposure to these chemicals would appear to indicate this possibility." Then on January 8, 1999, Dr. W said that "I was not aware that toxic chlorine gas was the result of the mixture of bleach and renalin until a MSDS sheet was received at my request on October 20, 1998." He then wrote, "I am convinced that this exposure was the underlying cause of her medical problems and do feel that she should not be exposed again to chemicals." Clearly, the October 20, 1998, knowledge gained as to existence of chlorine gas from a mixture of renalin and bleach, was also present on October 22nd and November 4th when two of Dr. W's writings use the word "possibility"; therefore, it is questionable whether this added knowledge is the basis for the change from October 22, 1998, to January 8, 1999.

Nevertheless, Dr. W in January 1999 is clear that he was convinced that the inhalation was "a" cause of claimant's condition. A fact finder may give weight to a physician's opinions even when the physician does not detail the mechanics and explain the basis for his conclusions. *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997. Under the 1989 Act, medical evidence is to be admitted. *See* Section 410.165(b) which provides that a hearing officer "shall accept all written reports signed by a health care provider," after Section 410.165(a) had provided that "conformity to the rules of evidence is not necessary." *See also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 142.8 and 142.13.

The hearing officer was the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The Appeals Panel is not a fact finder and whether this body would give more weight to the evidence provided by Dr. B as opposed to that provided by Dr. W is not the question. The question on review is only whether the determination is against the great weight and preponderance of the evidence. While Dr. W's notes and letters show that he knew of the chlorine gas result when he talked of a possibility, the hearing officer could consider that Dr. W, on October 22, 1998, was actually speaking in reference to a "possibility" as to an underlying other problem in addition to the chemical exposure. Even if Dr. W was speaking of a "possibility" as it relates to chlorine gas, his statement does not say that exposure was "only" a possibility, but rather his comment may reasonably be interpreted as a "possibility" that does not rule out a more significant relationship. As stated, Dr. W's January 8, 1999, statement makes it clear that he then considered the exposure to be "a" cause of the condition. *See* Texas Workers' Compensation Commission

Appeal No. 951417, decided October 9, 1995, which said that the words, "reasonable medical probability" do not have to be used to convey that meaning.

A determination of compensability does not require that the work injury be the proximate cause of an injury but only that it be a contributing cause. *See* Texas Workers' Compensation Commission Appeal No. 961283, decided August 19, 1996. In addition, an injury does not have to be permanent in order to be a compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 980066, decided February 25, 1998. The evidence was sufficient, as shown by the sequence of events, including prompt medical care, after exposure to chlorine gas and by Dr. W's opinion, to sufficiently support the determination that the exposure caused damage or harm to the claimant or aggravated her condition. While the carrier asserts that the hearing officer did not say what the injury was, the hearing officer did say that the chemical exposure aggravated claimant's preexisting lung condition; he also referred in his Statement of Evidence to "respiratory problems." The 1989 Act does not require that an injury be diagnosed in order to be a compensable injury. Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting form the damage or harm." The determination that claimant sustained an inhalation injury that involved her respiratory system is sufficient. While carrier cited Texas Workers' Compensation Commission Appeal No. 962277, decided December 23, 1996, and Texas Workers' Compensation Commission Appeal No. 980852, decided June 11, 1998, neither one of those cases controls the fact situation and evidence presented in this case.

The hearing officer excluded all witnesses other than the parties from the hearing. This included Dr. B, carrier's expert, even though carrier argued the need for Dr. B to hear the evidence presented. Tex. R. Civ. Evid. 613 is the basis for exclusion and it excepts from exclusion a person whose presence is shown to be essential. In this case, it has not been shown that Dr. B's testimony was limited by his exclusion, so although this was error, it was not reversible error.

In regard to disability, the hearing officer could believe claimant's testimony as to her inability to work until January 19, 1999, when she was able to return and could also give weight to Dr. W's advice not to return to any work involving renalin.

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

_____
Thomas A. Knapp
Appeals Judge