APPEAL NO. 991125

Following a contested case hearing (CCH) held on April 22, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease including respiratory system problems that arose out of and in the course and scope of her employment with (employer) on _____, and that claimant did not have disability beginning on April 22, 1998, because she did not sustain a compensable injury. Claimant's request for appeal, which discusses some of the evidence and asserts additional evidence not in the record, does not challenge any specific finding of fact or conclusion of law and will be considered a general challenge to the sufficiency of the evidence to support the hearing officer's resolution of the two disputed issues. The respondent (carrier) points out in its response that claimant's appeal asserts certain new evidence and just makes various comments on some of the evidence. The carrier contends that the evidence is sufficient to support the hearing officer's findings and conclusions resolving the two disputed issues before him.

DECISION

Affirmed.

The hearing officer's Decision and Order contains a thorough and exhaustive recitation of the substantial medical evidence adduced at the hearing. Accordingly, this decision will refer only to so much of the evidence as is necessary to provide the context for the decision. As for any new evidence on appeal, the Appeals Panel generally considers only the evidence in the record from the CCH.

Claimant testified by telephone from her home in another state that, after completing a pre-employment physical exam, she commenced employment with the employer on February 19, 1998; that the employer's business was to pack and ship various kinds of mushrooms including Shiitake mushrooms; that after commencing her employment she began to experience tightness in her chest, coughing, and hoarseness; that she discussed these symptoms with coworkers while on break and was told they had also experienced such symptoms and that it was "only a matter of time" before she, too, would be sick; that management personnel called a meeting of the employees and advised them that the employer was "trying to clean up the air"; and that by early March 1998, she was seriously ill, had no voice, and was coughing, spitting, and choking. She said she worked full time in the "Shiitake extension" after February 19, 1998, but that after March 7, 1998, she was given duties in disease control and only worked on an irregular basis due to taking time off to see various doctors for her respiratory problems and to being taken off work. Claimant further stated that she was taken off work completely by a doctor on _____, that she has not since worked at all, and that she moved to City 1, City 2, in August 1998.

Claimant conceded that she had bouts of bronchitis before commencing this employment, including seeking medical treatment on October 11, 1997, but disputed a reference in the history portion of a March 12, 1998, medical record stating that she "has been sick off and on for a couple of months," which would have her experiencing symptoms in January 1998. She also conceded that she smoked one to two packs of cigarettes for 30 years and that doctors had counseled her to quit before she did so in April 1998. Dr. A reported on March 27, 1998, that claimant has been a heavy smoker for 30 years, has had recent problems with bronchitis and hoarseness after exposure to molds in the plant where she works, and that his impression is laryngopharyngeal reflux and bilateral vocal cord leukoplakia secondary to smoking. On April 17, 1998, Dr. A stated the impression as possible work-related hypersensitivity pneumonitis or occupational asthma. Claimant stated that she contends she sustained a compensable injury on _____, in the form of respiratory problems from exposure to Shiitake mushroom spores during the period from February 19 to March 7, 1998. Claimant further contended that she has had disability (Section 401.011(16)) from _____, to the date of the hearing. However, she recognized that Dr. TS wrote on May 20, 1998, that her upper respiratory tract infection and laryngeal infection have cleared and that she can return to her employment. Dr. TS recommended that she be relocated within the company "due to a demonstrated susceptibility to upper respiratory tract infections in that particular environment." There were no disputed issues concerning the date of the occupational disease injury or of providing timely notice of the injury to the employer.

Claimant relied, for the most part, on the records of Dr. A; the May 29, 1998, report of Dr. C, one of three "peer review" doctors retained by the carrier; the August 26, 1998, report of the Occupational Safety and Health Administration (OSHA); and the April 6, 1999, report of Dr WS. Dr. A's records, discussed above, reflect that claimant was still being treated in June 1998 for "asthma like symptoms" and in July 1998 for an allergic rash.

Dr. C's May 29, 1998, report states that he concluded, after reviewing claimant's medical records, that her coughing, wheezing, shortness of breath, and sputum production, "which were described as having been related to exposure to mushroom spores and again with recurrence of symptoms afer re-exposure, most likely poses a diagnosis of occupational asthma versus hypersensitivity pneumonitis," and that he favors the former diagnosis due to the relatively negative chest x-ray and normal spirometry test results. Dr. C further reported that there was no convincing evidence that claimant's leukoplakia was caused by her job but that he believed her lung condition was related to mushroom exposure with a leading diagnosis of occupational asthma.

The OSHA report, signed by an area director with no indication of medical expertise, stated that the employer's workers were exposed daily to high concentrations of Shiitake mushroom spores and that a majority exhibited health complaints consistent with "a medical diagnosis of hypersensitivity pneumonitis or mushroom workers disease." Claimant said she was not examined in connection with the OSHA investigation and report. The report also stated that no citation was issued for these hazards because no OSHA standard applied.

The May 26, 1998, report of Dr. SC, who reviewed the records, concluded that he eliminated hypersensitivity pneumonitis with reasonable medical probability, that a delayed onset of occupational asthma was unlikely but possible, and that with the evidence presented, there is no justification for documenting work-relatedness of the pulmonary problems.

Dr. K reported on June 12, 1998, that he reviewed claimant's records and that he is a member of the North American Mycological Association and experienced with the symptoms and adverse effects of different types of mushrooms and is familiar with hypersensitivity pneumonitis. Dr. K concluded there is a hypersensitivity pneumonitis characteristic of mushroom handlers but not for Shiitake mushrooms which are used medicinally, and that claimant does not have any of the diagnostic criteria for hypersensitivity pneumonitis. Dr. K further concluded that claimant's respiratory problems appear related to her long-term heavy cigarette smoking of two packs per day for 30 years.

Dr. D reported on September 17, 1998, that he examined claimant and reviewed her records and that he could not conclusively rule out the likelihood that her symptoms in February 1998 were related to her workplace exposure. Dr. D further stated that he felt it would be helpful if claimant's blood were submitted for testing for antibodies to Shiitake mushrooms and that a definite positive test would argue strongly in favor of a workplace relationship whereas a negative test result would make him more likely to rule out an occupational cause of her symptoms.

Dr. L reported to Dr. D on March 30, 1999, that he tested claimant's blood serum for antibody activities to Shiitake mushrooms and the results indicate that claimant's sera did not contain any detectable IgE or precipitating antibodies to Shiitake antigens. Dr. L further stated that based on experience, had such antibodies been present in claimant in significant levels, they would still be present and detectable notwithstanding the date of her exposure.

The April 6, 1999, report of Dr. WS states that he first examined claimant on that date, that in his medical judgement, she has either hypersensitivity pneumonitis due to mushroom spores or occupational asthma or both, and that from the history, it appears this began after she started working in a mushroom factory and has continued since then.

Dr. D wrote on April 15, 1999, that taking into account Dr. L's report, it is his opinion to a reasonable medical probability that claimant's symptoms described to him in September 1998 are not attributable to her exposure to Shiitake mushroom spores at the employer's facility.

Claimant had the burden to prove by a preponderance of the evidence that she sustained a compensable occupational disease injury as she claimed and that she had disability resulting from such injury. Concerning claims for occupational disease injuries, the Appeals Panel has stated that the fact that proof of causation is difficult does not relieve a claimant of the burden of proving it (Texas Workers' Compensation Commission Appeal

No. 93665, decided September 15, 1993); that while expert testimony is necessary to prove causation by reasonable medical probability, lay testimony about the working conditions is admissible (Texas Workers' Compensation Commission Appeal No. 93668, decided September 14, 1993); and the fact that an injury occurred during a period when the claimant was employed does not mandate a conclusion that the employment caused the injury (Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992).

Claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could, and obviously did, find the opinions of Dr. SC, Dr. K, and Dr. D more persuasive.

The decision and order of the hearing officer are affirmed.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Judy L. Stephens
Appeals Judge