

APPEAL NO. 991176

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 990211, decided March 10, 1999, we reversed the decision of the hearing officer that various "current conditions" of the appellant (claimant) were not the result of a toxic exposure incident on _____, and remanded this case for further proceedings to determine what the compensable injury of _____, was; whether the "current conditions" were the result of a compensable injury of _____; and whether the Hearings Division of the Texas Workers' Compensation Commission had jurisdiction over the disputed issue. The hearing officer, held a hearing on remand and determined that the compensable injury of _____, was bronchitis and pharyngitis; that the Hearings Division had jurisdiction in this case; and that the various "current conditions" were not a result of the compensable injury.

DECISION

Affirmed.

Essential background information about this case is contained in our decision in Appeal No. 990211 and need not be repeated here. In that decision, we directed the hearing officer to make specific findings of what the original compensable injury was in order to make appropriate findings with regard to the jurisdictional question. The hearing officer made a finding of fact on remand that as a result of the claimant's exposure to a toilet bowl cleaner which contained hydrochloric acid in the course and scope of her employment on _____, the claimant "sustained a compensable injury to her lungs in the form of bronchitis and to her throat in the form of pharyngitis." Finding of Fact No. 2. Neither party has appealed this finding. It was the claimant's position, as stated in her appeal, that other symptoms "appeared gradually," flowed naturally from the compensable injury, and are part of the original injury. These so-called "current conditions" include Epstein-Barr virus, reflux esophagitis, vestibular and visual dysfunction, vertigo and ischemia.

Consistent with our remand, the hearing officer then addressed the jurisdiction issue in light of the nature of the original injury. She concluded that the issue before her dealt with the extent of the original injury and not simply reasonably required medical care. The claimant argued that the issue was solely one of medical care for the Medical Review Division to adjudicate. In support of her position, she contended that the respondent (carrier) had routinely paid her medical bills until it filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in October 1998. On this form, the carrier stated that it disputed "entitlement to medical, indemnity benefits and mileage" for the reasons stated in an accompanying peer review report, discussed below. As noted in our prior decision in this case, it is appropriate and often required to go behind the phrasing in a TWCC-21 to determine what is at issue in a given case. We cannot agree with the claimant that only additional medical benefits are at stake in this case. Rather, we believe

that the claimant is contending that certain new conditions, generally affecting new body parts, in addition to the bronchitis and pharyngitis, are now compensable because they naturally flow from the original injuries. Without regard to the merits of this claim, we believe that such a contention by the claimant makes this an extent-of-injury case over which the hearing officer has jurisdiction. For this reason, we affirm the determination of the hearing officer that she has jurisdiction to decide the disputed issue.

The hearing officer then determined that the "current conditions" listed above "are separate injuries that did not naturally result from the original compensable injury." Finding of Fact No. 5. She also found that there was "no causal connection" between the exposure to the cleaning fluid and the "current conditions." Finding of Fact No. 4. The claimant appeals these determinations and the associated conclusion of law, expressing her disagreement with them and referring to medical evidence which she believes supports her position.

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 her compensable inhalation injury of _____, extended to the "current conditions." Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether the "current conditions" naturally resulted from or were causally connected to the original injury was a question of fact for the hearing officer to decide and had to be proved 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.); Texas Workers' Compensation Commission Appeal No. 981253, decided July 27, 1998.

As noted above, the initial diagnoses by Dr. H were bronchitis "due to chemicals" and pharyngitis. In a letter of October 16, 1995, (Dr. G) wrote that the claimant's stress test for ischemia was "negative." At an office visit on June 3, 1997, Dr. G noted symptoms of dizziness and lightheadedness and assessed vertigo. The vertigo apparently improved at later visits. On January 23, 1998, Dr. G assessed "[c]hronic vertigo following toxic fume exposure." He also diagnosed a "hypersensitivity reaction" to the exposure, but did not otherwise explain the relationship between the vertigo and the inhalation incident on _____. Dr. G referred the claimant to Dr. M. An electronystagmogram was considered normal except for a possible diffuse cerebellar dysfunction "possibly secondary to ischemic changes." He also noted a vestibular and visual dysfunction "that could be compatible with cerebellar problems of an ischemic nature." On June 5, 1998, Dr. M noted a cough which he attributed to reflux. In a letter of July 29, 1998, Dr. M wrote that the vestibular and visual dysfunction "developed after she apparently had been exposed to some toxic fumes in the work place."

Dr. C examined the claimant on August 9, 1995. He noted a "[h]igh probability of recent Epstein-Barr activity which may be contributing to the patient's persisting complaints of fatigue. This condition has no specific treatment and is not work-related." Dr. R

commented on February 26, 1996, that "with the progressive fatigue she had, it may have been in August of 1994 when she developed the Epstein-Barr virus infection."

Dr. CC performed a "peer review" on the claimant's medical records at the request of the carrier. In a report of September 15, 1998, Dr. CC wrote that the type of toilet bowl cleaner to which the claimant was exposed "is not normally an inhalant hazard." He concluded that the claimant's current problems were not related to an exposure on _____, because, in his opinion, the chemical used would not be expected to cause these types of complaints, there was lack of objective evidence to support the various diagnoses, and a viral infection could account for some of her symptoms.

The hearing officer considered the medical evidence and concluded that the claimant did not meet her burden of proving the compensability of her "current conditions." In her appeal of this determination, the claimant cites medical evidence that she believes supports her position. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). In the discharge of her fact finding responsibility, the hearing officer could evaluate the credibility of the opinions of the various doctors based on their explanations of causation or lack of an explanation for the "current conditions." For example, Dr. CC raised the question of how the claimed injury produced a viral infection, which itself could, in his opinion, explain some of the claimant's symptoms. Medical evidence relied on by the claimant did not address this question. Also, there was medical evidence of normal test results that brought into question whether the claimant had certain of the "current conditions." 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). The medical evidence in this case was complex and subject to varying inferences. Under our standard of review, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer. Rather, we find the evidence sufficient to support her determination that the "current conditions" are not the result of the compensable injury of _____.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge