APPEAL NO. 991316

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On May 19, 1999, a hearing was held. She (hearing officer) determined that appellant (claimant) did not show that his employment caused his condition, diagnosed as postinfectious demyelinating encephalitis; that he did not sustain a compensable injury on _____; and that he had no disability. Claimant asserts that the medical evidence of Dr. O and Dr. C show that he sustained a compensable injury while the peer review report should "carry no weight." Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). He was assigned to work for (site employer) in (City 1) as a laboratory technician. He was sent to temporarily work in (Country 1) in May 1998 to assist in updating a rubber glove factory. Claimant testified that he had two prior operations to his neck for which he needed certain prescriptions to ease his pain. When he arrived in (Country 1) on May 13, 1998, he brought medication with him in the form of Vicodin and Valium. However, he obtained an added amount of 30 tablets of Valium and 60 of the Vicodin on May 16, 1998. Then on May 23rd he obtained more of each. On May 25, 1998, claimant did not appear in the morning for the ride to work he was to share with other employees. He was later that morning found unconscious in his hotel room. His treatment in (Country 1) was directed toward a possible drug and alcohol overdose, and he did improve. He was returned to the United States, where he saw his family doctor, Dr. D, in early June 1998. Dr. D released him to work. Claimant then began seeing Dr. O, an internist, apparently on the recommendation of a friend, in July 1998. Dr. O on July 14, 1998, gave his impression of claimant as "altered mental status. I think that what he had was alcohol intoxication with drug overdose. Now the subsequent memory loss is difficult to determine."

Dr. O ordered a brain MRI which, claimant said, showed the "myelin tissue over my brain was affected and was kind of in a degenerating state." (Myelin is found in layers around nerves.) Dr. O stated the MRI showed "extensive signal abnormalities dissecting the white matter . . . it can be seen in multiple entities including demyelinating processes such as MS . . . or post-infectious states like demyelinating encephalomyelitis" and referred claimant to Dr. C, a neurologist. On July 27, 1998, Dr. C noted the MRI and claimant's history, including "2-3 alcohol drinks per day," and said that he thought claimant had a "postinfectious demyelination," based on liver function tests and claimant's preceding diarrhea. He did not think that alcohol or drug use caused this. Dr. C still said on December 14, 1998, that claimant has a "postinfectious demyelination," but he added, "[t]his is not a common human disease. The etiology of which is unclear."

The MRI in question reported in July 1998 that "extensive signal abnormality dissecting the white matter . . . [t]he finding is nonspecific and can be seen in multiple entities including demyelinating processes such as multiple sclerosis . . . [i]nfectious processes such as HIV and PML . . . with post-infectious/post viral states associated with ADEM (acute demyelinating encephalomyelitis). Toxic etiologies include alcoholism . . . ."

Without reference to any added studies since the December 14,1998, statement that said the "etiology of which is unclear," and without any added studies being shown in the record, Dr. C, less than one month later on January 11, 1999, said that claimant has been diagnosed with "postinfectious demyelinating encephalopathy" (encephalitis is an inflammation of the brain). He then said:

> It is my opinion that his travel to (Country 1) was directly responsible for his exposure to this virus . . . . This was in no way related to alcohol use . . . . (Emphasis added.)
>
> A patient, who travels to a region where he does not have routine exposure to the local pathogens, is at an increased risk for developing infections from new pathogens. The case in point is traveler's diarrhea.

Carrier presented the peer review of Dr. Co, an infectious disease specialist, who said claimant's medical workup is incomplete, that she did not find evidence to "suggest a diagnosis of an infectious or postinfectious demyelinating disorder," and that the illness in May 1998 "does not suggest an infectious process." She provided many reasons for her conclusions in a three-page report; among those were that the hospital in (Country 1) was well-equipped to do an analysis of cerebrospinal fluid but did not do so, that claimant's colleagues indicate no complaints of fever, a toxicology screen showed the "presence of opiates," that he was not worked up and treated for infection in (Country 1), but was considered to have overdosed and "he responded to the treatment [for] overdose with the above mentioned substances," and that the consulting neurologist did not appear to consider "Marchiafava-Bignami Syndrome [which] is a focal or diffuse demyelinating disorder related to toxic effects of ethanol consumption."

Claimant testified that on his claim he indicated a mosquito bite, but said he does not remember a mosquito bite, adding that a mosquito bite is "the way it's normally contracted." He also said that while in (Country 1) he stayed at a hotel. He agreed that he had drunk alcohol and taken his pain killers and muscle relaxers the day before he was found unconscious on May 25, 1998. He thereafter quit drinking and using prescription drugs in September 1998; he had been drinking "three scotches a night" for "two or three years" prior to going to (Country 1). (The size of the drinks was not described.)

Mr. B gave a sworn statement in question and answer form in which he said that he was a project manager for site employer and stayed in the same hotel as claimant and

other workers. He said that when claimant first arrived he looked like he had "very bad" jet lag. He then said that it "lasted pretty much the entire time he was in (Country 1)." He said claimant's "demeanor" did not change while there, that he was "difficult to be around," and that "he complained a lot." He accompanied claimant back to the United States on a plane and said claimant was worried about being fired and mentioned that "he had problems with drinking in the past." Mr. H also gave a sworn statement in question and answer form; he too is employed by site employer and lived in the same hotel in (Country 1). He said that he has known claimant for several years; when claimant arrived in (Country 1) he "seemed to be intoxicated"; he was "disoriented, erratic in his speech, wasn't able to focus on any particular question. He was sporadic in his movements and in his speech." Mr. H said he entered claimant's room on May 25, 1998, with others and saw claimant unconscious on the bed, having difficulty breathing. He saw "a glass full of alcohol on the table and two cartons, two Scotch box cartons that were in the trash." (Emphasis added.) Claimant's pills were found in a locked box. Mr. H saw claimant at the hospital after he regained consciousness and said claimant "was naming off things that could have happened to him . . . [b]asically an inventory of what could happen because he didn't have a clue." He said that he has seen many people arrive with jet lag and agreed that claimant's appeared to be different than that seen in others.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She summarized the evidence in her Statement of Evidence, including the opinions of Dr. C and Dr. Co, noting "there is speculation of a possible mosquito bite or spider bite, but there exists in this case a crucial deficiency in the proof of causation." Contrary to claimant's admonition, she could choose to give the report of Dr. Co, the peer review infectious disease specialist, significant weight. She could also note that while in (Country 1) claimant was said to complain a lot but there was no indication of any complaint of fever. The evidence, including the absence of any identification of "this virus" referred to by Dr. C, sufficiently supports her determination that causation was not shown, so there is no compensable injury. With no compensable injury, there can be no disability. *See* Section 401.011(16).

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:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge