APPEAL NO. 991418

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 4, 1999, a hearing was held. She (hearing officer) determined that the respondent (claimant) sustained an occupational disease on _____, and had disability from August 14, 1996, to July 24, 1997. Appellant (carrier) asserts that there is no evidence of a compensable injury; that the hearing officer found injury because of a high level of exposure; that there is no objective evidence of injuries; that Dr. K, upon whom the claimant relied, relied "solely upon high levels of lead in the area around claimant as proof of an injury"; and that claimant did not absorb enough lead to "exceed the OSHA lead standard." Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). He testified that he worked for over a year removing paint from iron and pipes with a blowtorch in order that various welding operations could be better accomplished. He said that he and other workers had symptoms for several months before monitors were received to track the amount of airborne contaminants. Claimant's air lead levels registered on the monitor he wore were read as 467 ug/M3 on March 21, 1996, and 146 ug/M3 on March 21, 1996. (*Compare to* Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991, which also considered airborne levels in the workplace in determining whether or not there was exposure in the workplace.) Claimant's symptoms included muscle spasms, fatigue, nausea, headaches, tremors, joint pain, and diarrhea. He said that Dr. C took him off work (Dr. C is an M.D., Ph.D. who specializes in occupational medicine and toxicology); Dr. C took him off work beginning in May 1996, but the issue, as framed, only inquires about disability beginning on August 14, 1996.

Dr. C noted in November 1996 that blood tests were within normal limits for heavy metals. In August 1997 Dr. C said that claimant had been taken off work pending various testing, for which approval was delayed resulting in such studies still being processed so that claimant was still unable to work. (The issue of disability was framed as whether or not claimant had disability from August 14, 1996, to July 24, 1997.) In September 1997 Dr. C said that claimant's diagnosis is "elusive," stating that there are problems in obtaining evaluations; he said the presumptive diagnosis is "noxious vapor inhalation, metal/polymer fume fever, chronic arthritis/arthralgia, reactive anxiety, and reactive depression."

Claimant's blood tests showed 10 mcg/dl of lead in November 1995, 6 mcg/dl of lead in November 1995, and 17 mcg/dl of lead in February 1996. The hearing officer also found that blood levels of 25 mcg/dl or above can produce permanent injury and that finding of fact was not appealed.

Carrier provided the testimony of Dr. H, who is the (Director of The Center). He said that claimant had no harmful exposure, citing the blood levels found. He added that with

the blood test levels of different substances claimant had, there would be no symptoms resulting from exposure. He agreed that OSHA safe levels for some substances have dropped over the years, but said that less than 25 (lead) is safe. He also said that there may be high exposure (air levels) without injury. He said that Dr. K's report stressed OSHA violations, not amounts found in the claimant's body through blood tests.

In addition, carrier provided reports by Dr. Co. He said there is no evidence that claimant sustained an injury. Dr. Co wrote that there is no showing of "excessive exposure to lead"; he also found no evidence of "permanent disability." He referred to Dr. K's report as raising a question of "fume fever" which he said was neither confirmed nor refuted. At any rate, he said such would be resolved upon claimant's cessation of exposure. He also mentioned that Dr. K referred to manganese exposure but counters by saying that he found no evidence of "significant manganese exposure."

Dr. K stated that he evaluated claimant in June 1998 and referred to questions from Dr. C and from Ms. K, a lawyer. Dr. K stated that he is certified by the Board of Medical Toxicology. He recited a history of claimant's exposure similar to that reported. He noted a history of thyroid deficiency, when claimant was younger, and symptoms of nausea, fatigue, diarrhea, headaches, "shakes," palpitations of the heart, and joint and muscle pain. Dr. K also reported that claimant told him his blood testing had shown that "only a little lead and chromium were found." Claimant had ceased working in April 1996 but tried to return, unsuccessfully, in August 1996. Dr. K referred to his current treatment as being provided by "the well known occupational health specialist, [Dr. C]." Dr. K questions Dr. Co's reports which he says ignore neurotoxic health risks from metal fumes including lead and manganese when inhaled over a long term; he also says Dr. Co's report does not appear to "recognize" metal and polymer fume fever. Dr. K said that air manganese levels were not checked. Dr. K also referred to the high levels of lead in the air where claimant worked. Dr. K identified metals in the metal alloys claimant was burning along with various metals in existing welding which would also be burned since the latter were often in the area where he was working. He said such combustion fumes contained metal and polymer fumes and carbon monoxide. He added that manganese was in the paint being burned and while no manganese was reported in testing claimant, he said it has a half-life of only 12 to 36 days, but "neurologic problems could persist." He said that manganese and other elements "do their damage and leave." Dr. K said that claimant had metal fume and polymer fume syndromes and that in reasonable medical probability elevations of various metals and compounds in claimant's blood that were not above OSHA standards could result in illness that would last over 18 months. He referred to Dr. C's final diagnosis as reported in December 1997 as being correct. That diagnosis was the same as that in September 1997 except Dr. C dropped the chronic arthritis/arthralgia diagnosis from his list of five presumptive diagnoses. Dr. K also gave added opinions about maximum medical improvement and impairment rating but those issues were not before this hearing or this appeal.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She found that claimant's chemical exposure resulted in an occupational disease on _____. While carrier states that claimant did not absorb enough metal to exceed OSHA guidelines, INA of Texas v. Adams, 793 S.W.2d 265 (Tex. App.-Beaumont 1990, no writ) indicates that a hearing loss injury may occur even when OSHA

sound levels were not shown to have been approached or exceeded. Dr. K gave a similar opinion. In addition, Appeal No. 91002, *supra*, affirmed a lead exposure injury case when that claimant had lead in his blood of 20 mg/M3. The hearing officer could reasonably conclude from the air monitoring that claimant was exposed to lead; from other evidence about the content of what he was burning, she could conclude he was exposed to other metals and polymers. This exposure coupled with some evidence of metal in claimant's blood plus the explanation given by Dr. K about the rapid half-life of other metals, along with the symptoms claimant exhibited, were sufficient to support a determination that claimant sustained an occupational disease. In addition, the hearing officer could consider that Dr. H said similar symptoms were exhibited by patients he had treated whose blood showed higher levels of lead. In reaching her decision, the hearing officer could give more weight to the opinions of Dr. K and Dr. C than she did to those of Dr. Co and Dr. H. She could determine that an injury occurred whether or not there was objective evidence of injury. *See* Texas Workers' Compensation Commission Appeal No. 92030, decided March 12, 1992, and Texas Workers' Compensation Commission Appeal No. 92300, decided August 13, 1992. (Objective evidence is required for impairment ratings–*see* Section 408.122.) Finally, the hearing officer could fairly read Dr. K's opinion without concluding that it did not show that Dr. K relied solely on high levels of lead in the air in order to find an injury. Similarly, the hearing officer's findings of fact do not show that she found a compensable injury simply because of a high lead level in the air.

As stated previously, Dr. C had claimant off work from prior to the date disability was found to begin until after the date disability was found to have ended. The evidence sufficiently supports the determination concerning disability.

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:

_____
Gary L. Kilgore
Appeals Judge

_____
Alan C. Ernst
Appeals Judge