

## APPEAL NO. 991592

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 10 and June 2, 1999. The issues at the CCH were whether respondent (carrier) provided workers' compensation coverage on \_\_\_\_\_, the date of injury; whether the carrier's contest of compensability was based on newly discovered evidence, thus allowing the re-opening of the issue of compensability; whether the appellant (claimant) had disability and the period of any disability; whether the compensable injury is a producing cause of low grade fever, sore throat, moderate chronic cough, shortness of breath and difficulty breathing, nausea, Legionnaires' disease, exacerbation of hydradenitis, chronic fatigue, chronic bronchitis, chronic asthma, headaches, and difficulty concentrating; and whether the claimant sustained an occupational disease injury on \_\_\_\_\_. The hearing officer determined that the carrier did have coverage on \_\_\_\_\_; that the carrier's contest of compensability was not based on newly discovered evidence; that the claimant did sustain an occupational disease injury on \_\_\_\_\_; that the compensable respiratory injury (bronchitis) was a producing cause of a low grade fever, sore throat, shortness of breath and headaches but was not a producing cause of moderate chronic cough, nausea, Legionnaires' disease, exacerbation of hydradenitis, chronic fatigue, chronic bronchitis, chronic asthma, and difficulty breathing; and that the claimant did not have disability. The determinations of the hearing officer as to coverage, newly discovered evidence, and the sustaining of an occupational disease injury on \_\_\_\_\_, are not on appeal, have become final, and will not be further discussed in this decision. Claimant appeals several findings of fact, essentially attacking the nature or extent of her \_\_\_\_\_, injury, and the no disability determination, pointing to and arguing evidence that she feels supports her position that her disease extends to all the matters claimed as set out in the issues and that she had and still has disability. The carrier responds to each assertion of error in the findings of fact and urges that the determinations are not against the great weight and preponderance of the evidence and should be affirmed.

## DECISION

Affirmed.

The Decision and Order of the hearing officer lists and sets forth fairly and adequately the evidence in this case and lists some 29 findings of fact. Only a brief summary necessary for our decision will be set forth here. The claimant started working as a telemarketer for the employer in June 1997, working in a office in an older house. She states the building was dirty, dusty, and had a very musty smell. She stated she started feeling ill about December 1997, but did not seek medical treatment until after the employer closed the building on \_\_\_\_\_, apparently as the result of complaints. After cleaning attempts, an independent survey was conducted which showed some conditions that needed attention for safe occupancy, including fungi and bacteria (gram negative bacteria) associated with indoor moisture problems. In any event, the claimant, and others, continued to be paid full wages through May 29, 1998. There was evidence that the

employer attempted to offer employment to the claimant but the claimant denied ever receiving any such offer, although a letter on the matter was also sent to her attorney, and there was a notation that others did accept the offer.

In any event, the claimant sought medical treatment from Dr. S on March 9, 1998, was diagnosed with bronchitis, and has continued to treat with him although she has also been referred to other doctors and her medical records have been reviewed by a peer review doctor, Dr. C. Dr. S referred the claimant to Dr. M, a pulmonary specialist, who, in a May 6, 1998, report, stated in accordance with history that the claimant has had bronchitis but found claimant's lungs to be clear and at the time did not see any evidence of any particular problem. Claimant was also seen by Dr. CA, an infectious disease specialist. Dr. CA reported on May 6, 1998, an assessment of possible hypersensitive airway disease related to environmental occupational exposure to infectious agents including saprophytic fungi and gram negative bacteria and notes that "since she has been removed from the possible source of infection, note the symptoms should improve." In a letter dated January 8, 1999, Dr. CA discusses the possibility that the claimant and another employee could have an adenovirus that they circulated amongst themselves and mistakenly attributed it to the workplace and that it was possible they had a "hypersensitive illness" involving allergic reactions to inhaled spores or other environmental particles. He stated "I do not think that a persisting illness of this duration could be properly attributed to an exposure from their workplace" and suggested the reasons could well be related to preexisting conditions exacerbated by this illness.

In a deposition of Dr. S in March 1999, regarding the claimant's ability to work, he stated that "she was told she could return to light duty in March" and that "she told me the company didn't have any light work." He also stated that the prognosis for the claimant is good "if the patient will increase her activity slowly."

Dr. C's peer review reports on July 23, 1998, and February 21, 1999, indicate that neither clinical manifestation nor serological tests confirm Legionnaires' disease, state that the medications administered are appropriate considering the history of reactive airways dysfunction which was not established to be significant, and opines the "medical evaluation of this patient fails to establish the presence of any condition related, in reasonable medical probability, to the workplace based upon the evaluation of the workplace environment separately discussed."

As indicated, the hearing officer did find a compensable injury and this is not on appeal; however, he found that the injury was not a producing cause of moderate chronic cough, nausea, Legionnaires' Disease, exacerbation of hydradenitis, chronic fatigue, chronic bronchitis, chronic asthma, and difficulty breathing. He also found no disability. Clearly, there was extensive medical evidence before him that supports his findings, although there was some conflict in the medical evidence and in the testimony of the claimant. Resolving such conflicts is the responsibility of the hearing officer (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and the Appeals Panel does not overturn a finding of fact made by

a hearing officer in assessing the evidence unless his findings are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). We do not find that to be the case here. Just as the hearing officer assess the weight of the testimony of witnesses (Bulliard v. Universal Underwriters Insurance Company, 609 S.W.2d 621(Tex. Civ. App.-Amarillo 1980, no writ), he also resolves any conflicts in expert testimony and evidence. Texas Employers Insurance Association v. Campos , 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Here, there was medical evidence that could support no compensable injury having occurred; however, the hearing officer found that the claimant did sustain a limited occupational disease and that is now final. However, there is sufficient evidence to support the limitations as to the extent of that injury as he determined. This is also the case with regard to his determination of no disability, under the circumstances presented. Finding sufficient evidence and no prejudicial error, the decision and order of the hearing officer are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Alan C. Ernst  
Appeals Judge