APPEAL NO. 991735

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On July 6, 1999, a hearing was held. He (hearing officer) considered two separate claims of alleged inhalation injury and disability. He determined that appellant (claimant) did not sustain an occupational disease on or about (Subsequent injury), and therefore had no disability therefrom. The hearing officer also found that claimant did sustain an inhalation injury, in the form of an aggravation injury, on (Injury), and had disability from Injury, to September 22, 1997. Claimant asserts that findings of fact and conclusions of law that support the determination that he did not have an occupational disease dated Subsequent injury, and that say his injury of Injury, was temporary with only a short period of disability are in error, citing the medical records of Dr. D, Dr. Dr. Mc, Dr. C, and Dr. F. Respondent (self-insured) replied that the decision should not be disturbed.

DECISION

We affirm in part and reverse and remand in part.

Claimant worked for City of (city) in its animal shelter. He testified that he began having respiratory symptoms in early 1997 after the freezer used for dead animals operated unsatisfactorily for a period of weeks during the winter of 1996-1997. While claimant was seen by several doctors who generally agreed that he had respiratory symptoms, the hearing officer is sufficiently supported by the evidence in finding that the evidence did not show that he was exposed to any particular agent on or before Subsequent injury, that caused injury.

Dr. D was appointed by the Texas Workers' Compensation Commission (Commission) to examine claimant. He pointed out that there was no information as to the quantity or quality of the exposure, but did note that claimant developed symptoms after the freezer problem in early 1997. He described the Injury, inhalation of fumes from welding at the shelter as "significantly exacerbating" claimant's condition. In addition, while the doctors named by claimant provided information that could be interpreted as indicative of occupational disease, the city provided the opinion of Dr. Co, who expressed doubt that claimant's "current symptoms could in any way be related to the alleged exposures." In addition, an independent medical examination provided by Dr. Fr in August 1998, said that it appeared that claimant developed "respiratory congestion" including cough and bronchitis during the winter of 1996 and "airway hyperreactivity following viral infection is a well recognized phenomena." Dr. Fr indicated that a valid pulmonary function test had not been obtained. The determination that claimant did not sustain an occupational disease on Subsequent injury, is sufficiently supported by the evidence; therefore, there would be no associated disability.

The determination that claimant's underlying bronchitis was aggravated by the fume inhalation of Injury, is sufficiently supported by the medical opinions of Dr. D and Dr. C

(specifically Dr. C's report of September 22, 1997, when he used the words, "aggravating factor" and more particularly on October 3, 1997, when he said he believed that claimant's symptoms are "all" due to "an occupational disease"). However, Finding of Fact No. 7 refers specifically to Dr. C's notes of September 22, 1997, and adds that claimant "was returned to work on September 22, 1997." Then, Finding of Fact No. 9 said that claimant could not earn his preinjury wage from September 17 to September 22, 1997, and this finding did not refer to any other evidence. Dr. C's reports of September 22, 1997, appears to return claimant to work "with restrictions," which are listed as "sedentary work only in well ventilated work place with no smoke, fumes, vapor, or strong odors." We understand that the hearing officer also found that claimant's condition was "temporarily aggravated," but no definition was given as to the length of such aggravation. The period of disability does not appear to be tied to the temporary nature of the aggravation but to the "return to work" cited in Finding of Fact No. 7. It appears that claimant was given a release to limited work only by Dr. C on September 22, 1997, who was also cited in regard to the finding of "aggravating"; his limited release is consistent with his reference to "aggravating" and does not indicate that the period of aggravation had ceased as of September 22, 1997. Since Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991, and a line of cases indicate that disability does not end when a claimant is returned to limited work, the case is remanded for the hearing officer to explain his basis for ending disability, relative to the compensable injury of Injury, on September 22, 1997, or to reconsider the ending date of disability and make other findings of fact that address disability. We note that claimant testified that he reported back to work, and after either two or three days was told to go home and come back when the restrictions were lifted. There is no evidence that he has worked thereafter.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge