

APPEAL NO. 992677

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 25, 1999, a hearing on remand was held. Texas Workers' Compensation Commission Appeal No. 991735, decided September 27, 1999, had considered two separate allegations of injury at work (occupational disease) by affirming the hearing officer's decision that no occupational disease was sustained relative to an _____, date (with no disability); that appeals decision also affirmed a determination of occupational disease (temporary aggravation of an underlying noncompensable bronchitis) occurring on _____, but remanded in regard to the determination that disability lasted from _____, to September 22, 1997; it referred to the reliance placed on (Dr. C) note of September 22, 1997, which Finding of Fact No. 7 had quoted from, but that finding then said that appellant (claimant) "was returned to work on September 22, 1997"; Appeal No. 991735 pointed out that Dr. C on September 22, 1997, had returned claimant to work as was stated in Finding of Fact No. 7, but that return was under restrictions of "sedentary work only in well ventilated work place with no smoke, fumes, vapor, or strong odors." (Claimant was then told there was no restricted work by the respondent [self-insured]). The hearing on remand provided no added evidence, but both parties argued, with claimant citing the medical evidence contained in his exhibits nos. 5, 8, and 12, which were admitted at the original hearing. The hearing officer determined that the period of disability was only from _____, to September 22, 1997. Claimant asserts on appeal that his disability continued past September 22, 1997, citing medical evidence; he also states that he was injured on _____, and that his _____, injury was not temporary, but these latter assertions have become final because they were affirmed in Appeal No. 991735. The appeals file contains no reply from the self-insured.

DECISION

We affirm.

As stated, the only issue on remand was that of disability relative to the affirmed determination that claimant's underlying noncompensable bronchitis was "temporarily aggravated" on _____, by welder's smoke. Appeal No. 991735 had also commented that "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."

The hearing officer in the Discussion set forth in his Decision After Remand states restrictions imposed after the _____, injury (by Dr. C) were "precautions" relative to the underlying reactive airways disease but those restrictions were "not from" or did not arise out of the _____, smoke exposure. Dr. C's restrictions of September 22, 1997,

appear on a form provided by self-insured; also on that form is Dr. C's opinion that claimant has an "evident chronic obstructive pulmonary disease"; his stated restrictions were "sedentary work only in well ventilated work place with no smoke, fumes, vapor or strong odors." Dr. C also provided a progress note with the same date, September 22, 1997. It said that claimant had been affected by smoke from a "torch" in a room with closed windows. Dr. C examined claimant and assessed that he has "chronic bronchitis, etiology unclear, but not obviously due to smoke inhalation on _____, except as an aggravating factor."

The author judge must point out that he, in writing Appeal No. 991735 which said that Dr. C commented in a report dated October 3, 1997, that claimant's symptoms are "all" due to the occupational disease, was wrong. Dr. C's words on October 3, 1997 (in reference to the same September 22, 1997, examination), were "I doubt that patient's symptoms are all due to an occupational [illegible, but probably disease]." In correcting that point, it is noted that such a statement as "not all symptoms" may have been considered by a fact finder as indicative that some symptoms emanated from the occupational disease, which would be sufficient to support a finding of disability.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He could choose to place emphasis on the reports of Dr. C as opposed to those of some other doctor, including one who thought there was no disability at all. Dr. C did say that the claimant had chronic bronchitis with an unknown etiology, which is also consistent with the affirmed determination that claimant did not sustain a compensable inhalation injury (occupational disease) in _____. In addition, Dr. C did say that the smoke exposure on _____ "temporarily aggravated" the condition (bronchitis or chronic obstructive pulmonary disease). From these reports of Dr. C the hearing officer, as fact finder, could reasonably infer that the restrictions Dr. C placed on future exposure were related to the underlying bronchitis and not to the effects of the compensable smoke exposure on _____. As such, the decision that disability ended on September 22, 1997, was based on a determination that any inability to work thereafter was because of the noncompensable condition of bronchitis and not because of the effects of the aggravation thereof occurring on _____. That determination is affirmable.

Other medical comments such as a statement that while claimant should avoid exposure to noxious stimulants, there was no "reason for the patient to be on disability" because he only needs removal from "his current work environment," would not support a finding of no disability. See Texas Workers' Compensation Commission Appeal No. 961641, decided October 3, 1996, which said that when a claimant was restricted from working with certain chemicals "because of the compensable injury," disability does not end. See *also* Texas Workers' Compensation Commission Appeal No. 971922, decided October 30, 1997, which also found that disability must be tied to the compensable injury.

While claimant also attacks the finding of no compensable injury in _____ and the finding that his compensable injury in _____ was only temporary, those determinations have been affirmed by Appeal No. 991735, *supra*, and were not subject to reconsideration at the hearing on remand.

Finding that the decision and order after remand are supported by sufficient evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge