APPEAL NO. 000122

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 30, 1999. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease, and that she had disability as a result of her compensable injury from May 7 to June 30, 1999. In its appeal, the appellant (carrier) challenges the legal sufficiency of the claimant's expert evidence of causation and contends that the hearing officer erred in determining that the claimant had sustained her burden of proving that she sustained a compensable occupational disease injury and that she had disability for the period found. In her response to the carrier's appeal, the claimant urges affirmance. The claimant did not appeal the hearing officer's determination that her disability ended on June 30, 1999; therefore, we will not address the question of the ending date of disability on appeal.

DECISION

Affirmed.

The claimant testified that she is a data processor for (employer), which manufactures plastic sheet products from pellets. The claimant testified that in 1996 she suffered her first episode of asthma and that she did not associate that episode with anything at work. In 1996, the claimant received treatment for her asthma from Dr. MC. The claimant testified that Dr. MC attributed her asthma to allergies in 1996. She stated that she underwent allergy testing and treatment with Dr. S at that time, that she was treated with weekly allergy shots, and that she was able to return to work.

In April 1999, the employer began work on installation of a new production line and the claimant again began to develop breathing problems at work. The claimant testified that the employer had also installed a new production line shortly before her 1996 asthma attack. The claimant testified that the installation of the new line in April 1999 resulted in an increased presence of "fluff," which was identified as the dust or talc that is generated from the resin used to produce the plastic. She explained that the employer used a blower to clean the "fluff" out of locations where it had collected before it installed the new line and that as a result of that activity, the air in the plant was "very dusty." In addition, the claimant testified that she was exposed to paint fumes during the installation of the line. She explained that her office is located above the production lines and that the window air conditioner in her office drew its air from the plant and that the unit was not ducted outside.

Mr. N, employer's safety manager, testified that the claimant's office is located about 90 to 95 feet from the machine where the resin pellets are melted to form the plastic, creating the "fluff." Mr. N acknowledged that in April 1999, the employer was readying a new production line. He stated that in the process, the "fluff" was moved or "stirred around" as it was cleaned up. He stated that the "fluff" is "largely contained" in the plant; however,

he acknowledged that it is present in the air and that it collects on surfaces. In addition, he stated that as part of the installation process, machinery was painted for a period of at least two weeks.

In a May 7, 1999, "To Whom it May Concern" letter, Dr. MC stated "I believe [claimant] has occupational asthma based on her clinical history and presentation." He noted that her asthma is worse when she is at work and that she does not have symptoms on weekends and during vacations. Finally, he stated that he had "recommended she try to change jobs to avoid apparent triggers that are present in the work place." In progress notes also dated May 7, 1999, Dr. MC noted that the claimant is exposed to "quite a bit of resins in a plastic factory" and concluded that she has "bronchial asthma which appears to be occupational in nature. She is clearly exposed to some trigger at work which aggravates her asthma." In an April 22, 1999, report, Dr. MC also opined that the claimant has occupational asthma, noting that her symptoms are worse when she is at work and that they improve when she is away from the workplace.

Dr. SC examined the claimant for the purpose of providing an opinion as to the cause of her asthma. In a July 29, 1999, report, Dr. SC noted that causation in occupational asthma cases is "problematic." However, he noted that just prior to the claimant's asthma attacks in 1996 and 1999, the employer had been in the process of installing a new production line which produced a "high amount of ambient irritants such as dust, mold and paint products and possibly isocyanate, epoxy and other potential sensitizers." Dr. SC acknowledged that the claimant's history was the only indication that her problem was work related; nonetheless, he concluded, as follows:

> [O]ur textbooks suggest that sometimes we have to make the diagnosis based on history and that the history alone is the strongest indication that we would have occupational asthma with reasonable medical probability. Many times we do not have ideal circumstances to provide additional supportive documentation. Nevertheless, she was witnessed as having severe asthma at the work site and that is why the claim was filed in the first place. In view of what she worked in proximity to, there is reasonable medical probability that the work place exposure was a cause of her asthma in my professional opinion.

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). The question of whether the claimant sustained a compensable injury in the form of an occupational disease presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence, including the medical evidence, and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness.

The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the parties agreed that medical evidence of causation, to a reasonable degree of medical probability, was required. The carrier asserts that the causation opinions from Dr. MC and Dr. SC do not rise to the level of reasonable medical probability and, thus, it contends that the hearing officer erred in determining that the claimant had sustained his burden of proving that she sustained a compensable injury. The carrier asserts that the medical evidence "establishes, at most, mere surmise and does not establish causation by the required reasonable medical probability." In Texas Workers' Compensation Commission Appeal No. 950455, decided May 9, 1995, we stated that it is the substance of the expert testimony, rather than the use of particular terms or phrases, that is determinative on the issue of reasonable medical probability. With this in mind, we cannot agree that the causation opinions of Dr. MC and Dr. SC do not rise to the level of reasonable medical probability. Accordingly, we reject the carrier's assertion that those opinions are legally insufficient to serve as expert evidence of causation. Our review of the record does not reveal that the hearing officer erred in determining that the opinions of Dr. MC and Dr. SC, establishing the causal connection between the claimant's employment and her asthma, rose to the level of reasonable medical probability. Therefore, no sound basis exists for us to reverse the hearing officer's determination that the claimant sustained a compensable occupational disease injury. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The success of the carrier's argument that the claimant did not have disability is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the determination that the claimant sustained a compensable injury, we likewise affirm the hearing officer's disability determination.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge