APPEAL NO. 000394

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 January 21, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and did not have disability. The claimant appeals, expressing her disagreement with these determinations and pointing out evidence that, she said, supported her position. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

This is a chemical sensitivity case. The claimant began work for the employer in 1977. Her job included the use of solder, a chemical solvent, and isopropyl alcohol in assembling electronic components. She underwent a sinus drainage procedure in 1979 or 1980, after which there were recurrent episodes of sinusitis and nasal obstruction, as well as shortness of breath, watering of the eyes, and swelling of the face and nose. Antifungal treatment proved unsuccessful. A nasal septal reconstruction was done in 1991 with some relief. In 1996 a third sinus operation was performed. Testing in December 1996 showed an allergic reaction to some foods. On May 6, 1998, the claimant completed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) on which she listed a date of injury of _____.[1]

There was no dispute that the claimant used solder, isopropyl alcohol, and another solvent in her job. She testified that the solder effected her "real bad" and that her doctors told her that her allergies were not severe enough to cause the problems she encountered. She said when she removed herself from the work environment, her symptoms improved by 75%. Dr. P, apparently the claimant's family doctor, wrote on July 15, 1998, that sinusitis "begins from sinus aggravation from environmental factors"; that various therapies were not successful; that whenever she left the work environment for an extended time her symptoms resolved, only to recur when she returned to work; and that "[i]t may be true that she has some underlying 'ordinary disease' of life, but even that does not change the above correlation between work and symptoms." His diagnosis was chronic sinusitis induced from work-related chemical sensitivities.

Dr. P referred the claimant to Dr. S, an otolaryngologist, who wrote on April 2, 1998, that "[b]ecause leaving work was the only significant change that the patient has done, I

[1]There was no separate issue of date of the claimed injury and there appears to be no dispute that this is the date of the claimed injury. *See* Section 408.007 which provides that the date of injury of an occupational disease is the date the claimant "knew or should have known that the disease may be related to the employment."

can only attribute work exposure to her rhinitis and chest symptoms: chemical sensitivities." At this point he was unable to identify which chemicals in the workplace were causing the problems. In a report of March 13, 1998, he found testing for food, molds, and pollen allergies as negative. Dr. J, of the (clinic), examined the claimant on November 25, 1998. He noted that the claimant's symptoms markedly decreased within a three- to four-day period away from the workplace and that volatile organic and aliphatic solvent levels were found in the claimant approximately 13 days after she returned to work on September 10, 1998. He found the claimant "moderately sensitive" to molds, trees, weeds, grasses, and dust mites. His impression was "[t]oxic effect of fumes and odors with resulting hypersensitivity both to fumes and odors and to pollens." Dr B, also on referral from Dr. P, examined the claimant on August 5, 1998, and concluded that the claimant's sensitivity was caused by exposure at work for essentially the same reason that the symptoms appeared to resolve when she was away from the workplace.

On May 16, 1998, Dr. W performed a records review of the claimant's medical history. He concluded that she clearly had recurrent allergic rhinitis and chronic sinusitis and that "the underlying condition preceded documented exposure to job related chemicals in that the illness was at least partially present in 1980 and 1991 before the documented exposure to chemicals." Nonetheless, he found that "in view of the fact that her symptoms apparently worsened in November 1995 based on job exposure, certainly the ongoing chemical exposure in her work represented a major exacerbating factor in her chronic condition." He supplemented this report with a second report of May 27, 1998, in which he noted that air sampling for lead (presumably in the solder) and for the isopropyl alcohol was well below OSHA permissible standards and that the use of the solvent cleaner was rare. He still conceded that an "unfavorable reaction" even at these levels was possible and concluded:

> However, because the claimant's adverse reactions to these chemicals caused an allergic reaction rather than a specific response to toxicity, the new information would not change any of the opinions held after the initial review.

A peer review of the claimant's medical records was provided by Dr. C on June 2, 1998, at the request of the self-insured. He commented that the claimant had sinus difficulties "well before" the first surgery in 1979; that neither the surgeries, nor antibiotics were successful; and that her "continuous sinusitis/rhinitis" was an ordinary disease of life and not caused by the "low levels" of exposure to chemicals at work.

Ms. H, an industrial hygienist, testified that she did air sampling in the area where isopropyl alcohol was used and soldering was done and found the exposure to be minor and well below OSHA standards.

The hearing officer considered this evidence and concluded that the claimant failed to meet her burden of proving by reasonable medical probability that her sinus condition was causally connected to her employment. Rather, she found Dr. C's opinion persuasive

that the claimant's medical condition was an ordinary disease of life. In her decision and order, the hearing officer set out the applicable legal principles to be applied in this case. We need add that we will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). In her appeal, the claimant asserts that opinions of Dr. P, Dr. S, and Dr. J clearly established causation in the workplace. She also contended that the testimony of Ms. H should be disregarded because Ms. S did not test the air at her specific work site. We agree that the claimant's medical evidence supported her position, but it was up to the hearing officer to assign the weight and credibility to be given this evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). She was not persuaded by the theory of causation based on symptoms in the workplace and found Dr. C's opinion about the long-standing nature of the problem and other sensitivities of the claimant more credible. It is also correct that Ms. H did not say she tested the claimant's specific work area, but only that she tested where the same chemicals were used. Again, it was up to the hearing officer to assign the appropriate weight and credibility to this evidence. In this regard, we note that the mere fact that exposures are below OSHA levels does not preclude a finding that the chemicals even at these low levels caused the claimed injury. *See* Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. While another hearing officer may have found otherwise, we believe the decision of this hearing officer has sufficient evidentiary support and decline to reverse it.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge