APPEAL NO. 000534

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 February 4, 2000. The issues at the CCH were the date of injury; whether the appellant (claimant) sustained a compensable injury; and whether the claimant had disability from July 12, 1997, through the date of the hearing. The hearing officer determined that the date of injury is _____; that the claimant did not sustain a compensable injury on that date; and that the claimant has not had disability. The claimant appeals the injury and disability determinations, asserting that the evidence established that he sustained a chemical exposure injury while working on _____, and that he was unable to work from July 12, 1997, to December 15, 1999, due to side effects he experienced from the Dilantin prescribed for seizures by Dr. T. Claimant also asserts error by the hearing officer in admitting the medical records of Dr. T and Dr. C, although claimant fails to indicate the nature of the errors. The respondent (carrier) urges the sufficiency of the evidence to support the challenged injury and disability determinations and the absence of error in the admission of the medical records. The hearing officer=s determination that the date of injury is _____, not having been appealed, has become final. Section 410.169.

DECISION

Affirmed.

Claimant testified that until his employment was terminated for cause on July 21, 1997, he was employed by (employer), and that his duties included spraying trees and plants with herbicides and pesticides and that when performing such spraying he wore a hat, goggles, a nose and mouth respirator, a long-sleeved uniform shirt, trousers, and boots. He stated that on _____, while spraying tropical hibiscus plants with chemicals, he felt a burning sensation on his face and in his eyes and developed a headache. Claimant indicated that the chemicals he had used that day included Azatin EC, Dursban 4E, Dursban 50W, Marathon, M-Pede, Pentac,Talstar, Tame, Zyban, Banner May, and Truban. He said he reported his chemical exposure injury to his supervisor, Mr. G, who advised that he would bring in some cream from home for the facial burns; that Mr. G never brought in the cream; that he then sought medical treatment and was first seen for the injury by Dr. CO on June 3, 1997; and that Dr. CO treated his facial rash with cream, told him it was not related to his work, and returned him to work. Dr. CO's records of June 3, 1997, state that claimant had a rash on his forehead which appeared viral in nature, a rash between his toes, and a rash on his toenail, and the diagnosis was tinea pedis, onychomycosis of the toenail, and viral exanthem rash on the face. Dr. CO further wrote that he warned claimant "that this may not be covered by Workman=s Comp because I doubt seriously that it is related to his work environment."

Claimant indicated that on July 11, 1997, he commenced treatment with Dr J and that Dr. J told him his injuries were related to his work, took him off work, and gave him some literature on chemical exposure which he looked over. Claimant indicated that he had several

visits to Dr. J but was not able to continue seeing him after his employment was terminated and that he subsequently was seen by several doctors including Dr. R, Dr. H, Dr. T, and Dr. N. He acknowledged having missed a scheduled appointment for examination by the carrier=s required medical examination doctor, Dr. F, but explained that he had experienced transportation problems. In addition to his testimony, claimant introduced several handwritten notes relating matters occurring in June and July 1997.

Claimant further testified that he had an adverse reaction to the Dilantin which was prescribed by Dr. T after claimant told him about having "blackouts." He also said that he developed a foot rash caused by cuts in his boots. Claimant indicated that Dr. N released him for return to work in May 1998 and that he did not thereafter go to work but rather started some schooling in conjunction with the Texas Rehabilitation Commission. He said he had to withdraw from the courses because of some attendance problems caused by schedule conflicts.

Despite the injury date of _____, on his Employee=s Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), claimant insisted that the injury date was _____, and explained that the TWCC-41 was prepared in the office of the lawyer he was seeing at the time.

Dr. J wrote on August 5, 1998, that he first saw claimant on January 20, 1998, for a skin rash, shortness of breath, and chest pain following exposure to chemicals while working at his job. Dr. J stated that in his medical opinion, the clinical findings "are as a direct result from this exposure as the patient indicated no prior history of chest pain, shortness of breath or the skin rash prior to this chemical fumes exposure." Dr. J=s October 14, 1998, letter states essentially the same information.

Dr. R wrote on October 2, 1998, that claimant was first seen at the clinic on October 21, 1997, with multiple complaints, "the main ones of which seemed to be abdominal cramping and a rash to his face which had been there since April when he was allegedly exposed to some pesticides apparently at his job"; that he was unaware of the name of the pesticide and provided no information as to the particular products to which he was exposed; that he has been seen by multiple providers and the rash he claims to have has never been seen by any medical providers, as far as Dr. R knows; that his history is very vague and it is very difficult to understand exactly what his major complaints are; and that "it is rather unusual that he would continue to display symptoms over a year after the alleged exposure to pesticides." Dr. R concluded that "claimant presents with a multitude of different complaints none of which have been substantiated by physical findings or biochemical data which we have collected," and that there appeared no disabling factors which would prevent claimant from gainful employment.

In evidence is the July 31, 1998, record of the psychiatrist who saw claimant on that date and which states that claimant can work as soon as work is available. The January 8,

1998, record from that clinic reflects that claimant was diagnosed with anxiety disorder with multiple somatic complaints.

Dr. F, board certified in occupational medicine and internal medicine and trained in toxicology, reported on December 3, 1999, that claimant failed to keep his appointment on November 30, 1999, and made no attempt to reschedule it; that he, Dr. F, reviewed claimant=s voluminous medical records; and that in his opinion, there is no objective evidence that claimant suffers from any injury as a result of his alleged exposure to chemicals during the course of his employment with the employer. Dr. F further stated that in his opinion, Dr. J=s October 14, 1998, report "simply represents a recitation of symptoms as opposed to a true diagnosis" and that objective evidence of a chemical exposure injury has not been documented by any physician.

Claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers= Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers= compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers= Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref=d n.r.e.). Further, in cases such as this where the nature of the claimed injury is beyond common knowledge, expert evidence is required to prove causation and the nexus with the work place. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref=d n.r.e.); Schaefer v. Texas Employers= Insurance Association, 612 S.W.2d 199 (Tex. 1980).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref=d n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King=s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

As for claimant=s assertions of error by the hearing officer in the admission of certain medical records, not only are we unable to determine from the record developed at the hearing which records claimant refers to, but all of the carrier=s exhibits were admitted without objection.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge