

APPEAL NO. 001008

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 April 5, 2000. She made the following findings of fact and conclusion of law:

**FINDINGS OF FACT**

5. Claimant's [appellant] exposure to smoke on \_\_\_\_\_ exacerbated Claimant's symptoms of his chronic sinusitis condition but did not accelerate, enhance or worsen Claimant's underlying condition of chronic sinusitis.
6. Claimant's exacerbation of symptoms subsided after non-exposure from smoke and fumes from firefighting duties.

**CONCLUSION OF LAW**

3. Claimant did not sustain a compensable injury on \_\_\_\_\_.

The claimant appealed, contended that the hearing officer did not properly apply the law, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the decision of the hearing officer be reversed. The respondent (self-insured) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

**DECISION**

We reverse the decision of the hearing officer and render a decision that the claimant sustained a compensable injury on \_\_\_\_\_.

It is undisputed that the claimant had chronic sinusitis prior to \_\_\_\_\_. On that date, he was exposed to fumes from a minor electrical fire. He testified that after he removed the cover of an electrical outlet and got a whiff of the fumes, he immediately developed a headache; that his right eye began to throb; that for the first time, he could feel a throb in the area of the eye each time his heart beat; that his right side was swollen; that he could not breathe on the right side and had difficulty breathing; that he went to Dr. JC; and that Dr. JC saw that he was red and had difficulty breathing and placed him on medication.

In an Initial Medical Report (TWCC-61) dated November 4, 1998, Dr. JC stated that he saw the claimant on October 28, 1998; that the claimant gave a history of inhaling fumes from some burning wire insulation; that this seemed to irritate the nasal passages, sinuses, and right eye; that the claimant had been having symptoms of right nasal

obstruction; that examination revealed the eyes to be essentially normal; that the nasal passages were congested, worse on the right than on the left; that the mucosa intranasally was inflamed; that the claimant had a long history of severe chronic sinus disease; and that he, Dr. JC, placed the claimant on prednisone. In a Specific and Subsequent Medical Report (TWCC-64) Dr. JC said that he saw the claimant on November 4, 1998; that the claimant was still having symptoms of a very stuffy nose and stated that he felt terrible; that the claimant had a little bit of purulent rhinorrhea on the right; and that Vibramycin was prescribed. In a report of disability evaluation dated December 4, 1998, Dr. A stated that the claimant appeared to have very significant sinus disease and that there was no doubt that smoke will irritate his condition. In a letter dated December 21, 1998, Dr. A said that the claimant had a long history of sinus disease and that it was unlikely that one particular event would cause permanent problems for the claimant. In a report dated January 12, 1999, Dr. KC, an ear, nose, and throat specialist who had treated the claimant for a considerable time, stated that the claimant had not been on fire trucks since the end of October 1998; that he had not had the extremely severe headaches since then; and that there was no green rhinorrhea. In a letter dated September 8, 1999, Dr. KC said that she saw the claimant on September 3, 1999; that his chronic sinus problems were much improved since he was no longer exposed to smoke in the course of his duties as a fire fighter; and that the resolution of symptoms suggests that his smoke exposure substantially contributed to his chronic sinusitis.

At the request of the self-insured, Dr. H reviewed the claimant's medical records. In a letter dated February 24, 1999, that is apparently in response to questions from the self-insured, Dr. H stated that the symptomatology referred to on October 28, 1998, was caused by an aggravation of chronic mucosal sinus disease on \_\_\_\_\_, and that the diagnosis of acute irritation to the nasal passages and sinuses was secondary to smoke inhalation. Dr. H also referred to a report from Dr. KC that is not in evidence and wrote:

On 11-06-98, [Dr. KC] at UTMB otolaryngology department found "thick oropharyngeal mucoid discharge" and with "zero degree mucosal hyperemic with polypoid change purulent noted in the posterior aspect of the nasal cavity. The maxillary ostia are widely patent bilaterally, except there is purulent exudate noted, right greater than left. No polyps noted. Frontal recess area appears free of drainage and ethmoid air cells open." Her diagnosis at that time, "acute exacerbation of chronic problem." [Dr. KC] goes on to state that this appears to be associated with his infections with his working environment of being a firefighter and felt that he should consider retirement. He was placed [on] continued sinus irrigation with Zithromycin, and he would be at LA on return visit. On 1/12/99, [claimant] says "I'm doing better." Mucus was thinner. He was still having intermittent frontal headaches but had not been on any fire truck since the end of October and had not had any complaint of severe headache since that time. He had no green rhinorrhea. Her examination showed scopes seeing the mucosa less inflamed. Opening into both antra are widely patent. Impression - chronic sinusitis with decreased exposure to smoke and particulate matter.

[Claimant] has chronic sinus mucosal disease dating back to the x-ray finding of December 1995 but prior history of major sinus surgeries prior to this time. His continued exposure to toxic fumes in his occupation as a fireman constantly aggravated his chronic sinus condition. The incident of \_\_\_\_\_ is an example of this. It did not cause his chronic sinusitis, and per [Dr. KC's] note on 1/12/99, this acute episode has cleared.

Injury is defined as damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. Section 401.011(26). In Texas Workers' Compensation Commission Appeal No. 971993, decided November 13, 1997, the Appeals Panel held that the definition of injury does not require that the damage or harm be permanent and that even though the damage or harm to the physical structure of the body may not be demonstrated through objective testing months later that does not mean that there was not an injury. Evidence of some enhancement, acceleration, or worsening of an underlying condition must be shown to establish a compensable aggravation of an underlying condition. Texas Workers' Compensation Commission Appeal No. 962641, decided January 29, 1997. Work-related aggravation of a non work-related condition may result in a compensable injury. Texas Workers' Compensation Commission Appeal No. 952184, decided February 7, 1996. In Texas Workers' Compensation Commission Appeal No. 94168, decided March 25, 1994, the Appeals Panel affirmed a decision that the aggravation of the claimant's preexisting rhinitis, inflammation of the mucous membrane of the nose, was a compensable injury. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (28th ed. 1994) at page 1521 defines sign as:

an indication of the existence of something; any objective evidence of disease, i.e., such evidence as is perceptible to the examining physician, as opposed to the subjective sensations (symptoms) of the patient.

At page 1620 of DORLAND'S, symptom is defined as:

any subjective evidence of disease or of a patient's condition, i.e., such evidence as perceived by the patient; a noticeable change in the patient's condition indicative of some bodily or mental state.

Objective is defined in Section 401.011(32) as:

independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests, or signs confirmable by physical examination.

Section 401.011(41) defines subjective as:

perceivable only by an employee and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

The evidence establishes that the exposure on \_\_\_\_\_, exacerbated the claimant's symptoms. But the medical evidence also clearly establishes that physical examination revealed a worsening of his underlying condition of chronic sinusitis and that later the condition improved. The portion of Finding of Fact No. 5 that the claimant's exposure to smoke on \_\_\_\_\_, did not accelerate, enhance, or worsen the claimant's underlying condition of chronic sinusitis and Conclusion of Law No. 3 that the claimant did not sustain a compensable injury on \_\_\_\_\_, are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust and are reversed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We reverse the decision of the hearing officer that the claimant did not sustain a compensable injury on \_\_\_\_\_, and the order that the self-insured is not liable for benefits and render a decision that the claimant sustained a compensable injury on \_\_\_\_\_, and an order that the self-insured is to pay benefits as required by the 1989 Act and Texas Workers' Compensation Commission rules.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Dorian E. Ramirez  
Appeals Judge

\_\_\_\_\_  
Judy L. Stephens  
Appeals Judge