APPEAL NO. 001775

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 July 3, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of injury of the alleged occupational disease is _____; that even had a work-related injury occurred, the respondent (carrier) is otherwise relieved of liability for the alleged injury due to the claimant's failure to give timely notice of the alleged occupational disease to his employer within 30 days of the date of the alleged injury; that the claimant did not have good cause for failing to timely report his alleged injury; and that the claimant did not have disability. The claimant appealed the adverse determinations on the grounds of sufficiency of the evidence. The carrier responded that the evidence was sufficient to support the hearing officer's determination and the Decision and Order should be affirmed.

DECISION

Affirmed.

First, we briefly address the carrier's response that since the claimant had not specifically disputed Findings of Fact Nos. 1, 2, 8 and 9 and Conclusions of Law Nos. 1 and 2, those findings have "become final." We agree that the determinations regarding jurisdiction and venue were not appealed by the claimant and have become final. Section 410.169. However, the claimant did contest the ultimate conclusions regarding whether he had sustained a compensable injury and had disability which were supported by Findings of Fact Nos. 8 and 9. As we held in Texas Workers' Compensation Commission Appeal No. 000888, decided June 6, 2000, the pro se claimant specifically appealed the ultimate conclusions on which the hearing officer's decision was based and we disagree that individual findings of fact can become final as long as the issue or hearing officer's decision is appealed.

The hearing officer extensively discussed the evidence and testimony of the witnesses and only a brief summary will be contained in this decision. Much of this case turns on the credibility of the claimant and the interpretation and weight placed on the various medical records and statements. The claimant asserted that he sustained a compensable injury in the form of an occupational disease and that the date of injury was _____. The claimant testified that he worked as a chemical operator for the employer and his duties required him to make sure that the chemical process systems operated according to guidelines. The claimant explained that he worked at more than one site which exposed him to various chemicals up until the date of _____, but that the chemicals were fairly new and he did not know the effect of long term exposure to such chemicals. He did not allege a specific acute exposure to a particular chemical.

The claimant testified that he experienced headaches, numbness in his extremities, fatigue, rashes, dry-skin, dry mouth and nasal passages, nausea, gastro-intestinal problems, muscle aches, chest pains, and anxiety. He explained that he sought medical treatment in October 1998, with Dr. C and that testing revealed elevated liver function. He testified that he had seen other doctors, including Dr. B and Dr. T, for his symptoms, but they offered varying opinions as to the etiology of his symptoms. The claimant testified that most of the doctors told him the symptoms were naturally occurring.

The claimant testified that he was diagnosed with contact dermatitis in July 1998, and he reported a problem with his gloves to the employer, that they were causing a rash on his skin. In July 1998, he filed a claim for compensation for an injury to his lungs and on July 27, 1998, a claim for an injury to his hands and wrists. The claimant testified that from July 1998 through October 1998, he was examined by Dr. S, Dr. Wal, Dr. Was, Dr. B and Dr. T. He testified that he was given a different kind of gloves and the rash went away.

Employee medical records reflect that the claimant spoke with the employer's company nurse or doctor on _____, about his elevated liver function and his laboratory results and that review of his meds (medical records) and lab reports suggested a possible etiology. The claimant was told to let the health provider know if anything was found with his liver that was serious or that may relate to his ability to work.

On August 30, 1998, the claimant was examined by Dr. T at the request of Dr. B for a follow-up on his gastroesophageal reflux problems. During this office visit the claimant told Dr. T where he worked and that he was concerned about elevated liver function test results. He admitted that his discussion with Dr. T concluded with Dr. T telling him about various potential causes for the elevated findings, including chemical exposure, chronic liver disease related to infection and possible fatty liver. The claimant admitted that Dr. T ruled out chemical exposure as a cause of his problems. By letter dated September 13, 1998, Dr. T opined that the exact etiology of the liver test abnormalities was not clear but that the claimant should be moved to a different work location until his evaluation was completed. The claimant testified that he returned to Dr. B who suggested that the claimant be examined by Dr. C. A progress note from Dr. B reflects that he ruled out hepatotoxin exposure as of October 2, 1998. According to employment records, the claimant took the letter suggesting a new work location to his employer on October 2, 1998.

The hearing officer found that on or before _____, the claimant became concerned that he had sustained an occupational disease as evidence by elevated liver function test results and that on August 30, 1998, he discussed the results with Dr. T and told Dr. T that his elevated liver function was related to his employment. The hearing officer found that the claimant knew or should have known that his elevated liver function and various other symptoms were or could have been related to exposure to chemicals in his employment not later than _____; that the claimant did not give notice to the

employer of his injury until October 2, 1998; and, that the claimant did not have good cause for his failure to timely report his injury.

Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. In DeAnda v. Home Insurance Company, 618 S.W.2d 529 (Tex. 1980), the court stated that to fulfill the purpose of the notice provision, that is, to allow the insurer an opportunity to investigate the facts, the employer need only know the general nature of the injury and the fact that it is job related. We conclude that the hearing officer's findings and conclusion with regard to the date of injury and timely notice are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant testified that he filed a claim for compensation due to the skin rash on September 6, 1998, and another on October 11, 1998, for abnormal liver function which he claimed was due to chemical exposure. The carrier received notice of the October 11,1998, chemical exposure claim on November 4, 1999, and an adjuster called him the same day. The claimant testified that blood samples were taken in October 1998 by Dr. C and when he was notified of the abnormal results on _____, he immediately reported an injury and filed another claim for compensation. The claimant testified that Dr. C believed his elevated liver function was caused by his exposure to chemicals at work. By letter dated February 19, 1999, Dr. C opined that the claimant suffered from gammopathy, abnormal neuropathy, abnormal T and b cell functions, decreased NK cell activity and immune dysreguation due to solvent exposure. Dr. C certified the claimant to have reached maximum medical improvement (MMI) on December 14, 1999, with a 100% impairment rating. The claimant testified that he filed two different claims, one for a date of injury on October 11, 1998, and the other for a date of injury of _____, for the same abnormal liver test results which he and Dr. C believed were caused by chemical exposure at work.

Dr. W testified that he was the company doctor and on January 5, 1998, the claimant had minimally elevated liver findings (SGPT-58), the high normal being 50 and an HDL cholesterol test result of 33, the norm being 35-150. Dr. W opined that the laboratory used by Dr. C was not accredited and the diagnoses of Dr. C did not conform to accepted medical practice.

Dr. F testified that he first saw the claimant on June 1, 2000, when he reviewed the lab work done on October 23, 1998. He testified that he disagreed with Dr. C's findings and could find nothing to tie the claimant's multiple symptoms to one common cause. He believed the abnormalities to be so slight that they in no way represented a criteria for diagnosis, that the conclusions were not consistent with modern medical reasoning, and, without detailed follow-up and more definitive data, they represented inaccurate medical

judgment. His narrative report reflected that the claimant had no evidence of immune function disorder or objective toxicological evidence of exposure-related disease.

By narrative dated March 22, 1999, the carrier offered a peer review prepared by Dr. G. The narrative is quite lengthy and concludes that the claimant's mildly abnormal liver tests did not substantiate any diagnosis of liver disease or injury and was not work-related. He opined that the claimant's admission of alcohol consumption and smoking were the contributing factors to the abnormal test results. He found no evidence of any illness in the records that could be considered chemically induced. He disagreed with the diagnoses of Dr. C, calling them medically inaccurate and opining that his chemical attributions were toxicologically fallacious.

The 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm. Section 401.011(26). The injured employee has the burden to prove by a preponderance of the evidence that he sustained an injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The definition of "injury" includes occupational diseases. An occupational disease is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). To establish that he has an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Whether the necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

In the present case, the claimant presented scientific evidence of causation. The carrier presented contrary evidence. The hearing officer found no compensable injury. Resolving the conflict in the evidence was the province of the hearing officer. We cannot say that the hearing officer was incorrect as a matter of law in finding no compensable injury. We conclude that the challenged determinations are not against the great weight and preponderance of the evidence. Cain, *supra*.

The claimant asserted disability from December 15, 1998, through June 10, 1999, the date he felt he was capable of returning to work and he was released back to work by Dr. C. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge