

## APPEAL NO. 001981

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 July 12, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury and that she did not have disability because she did not sustain a compensable injury. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response, to the claimant's appeal, the carrier argues that the claimant's appeal is untimely and that it is also insufficient to serve as an appeal. In the alternative, the carrier urges affirmance.

### DECISION

Affirmed.

Initially, we briefly consider the carrier's assertions that the claimant's appeal was not timely filed and that it is insufficient to serve as an appeal. We find no merit in those assertions. The claimant submitted a return receipt card demonstrating that a copy of her appeal was received in the Texas Workers' Compensation Commission's (Commission) central office mail room on August 8, 2000, within the time frame provided for filing an appeal in Section 410.202. In addition, we cannot agree that the claimant's appeal is insufficient to serve as an appeal. Rather, we interpret it as an evidentiary sufficiency challenge to the hearing officer's decision and it will be treated as such.

The claimant testified that on \_\_\_\_\_, she was working as a case manager for (employer). She stated that on that date about 15 to 20 minutes after she began her shift, a painter began painting a wall several feet away from her desk and that about 15 minutes later she developed numbness and tingling on the left side of her face, her mouth became very dry, and her throat "tightened up." The claimant first sought medical treatment on August 18, 1999, from Dr. H. In a report of October 29, 1999, Dr. H stated that on August 18th he diagnosed the claimant with a severe allergic reaction, contact dermatitis due to her exposure to paint fumes, other chemicals, and molds in the workplace and that he referred the claimant to Dr. B, an allergist. Dr. H concludes his October 29, 1999, report by stating that "[h]opefully with this letter we will make it very clear that our evaluation and [Dr. B's] evaluation are in agreement that the patient has an injury associated with environmental conditions in her work and are caused through that."

The claimant testified that Dr. H also referred her to Dr. R. In a "To Whom it May Concern" letter dated October 20, 1999, Dr. R stated that the claimant "had significant chemical exposure, which may have contributed to the evolution of this patient's medical condition." Dr. R stated that the claimant exhibited a positive Romberg's sign, "which is strongly suggestive of neurotoxicity and concluded that his initial impressions are "toxic encephalopathy secondary to toxic exposure to solvents and petrochemicals resulting in multi-organ system dysfunction." The claimant testified that in November 1999, she

changed her treating doctor to Dr. J. In progress notes of January 18, 2000, Dr. J stated that the claimant had an allergic respiratory reaction to “allergens (petroleum products and auto fumes)” at work. Dr. J diagnosed reactive airway disease.

On cross-examination, the claimant testified that the substances to which she was exposed that caused her problems were mold, mildew, paint fumes, new carpet fumes, and fumes from new ceiling tiles. She agreed that neither she, nor her doctors, could identify the specific agent that triggered her reaction. In addition, the claimant acknowledged that she was diagnosed with heart problems, mitral valve and tricuspid valve prolapse, and hypertension prior to her alleged injury. In addition, the claimant acknowledged that the allergy testing performed after her alleged injury was negative.

Dr. K, a medical toxicologist, testified on behalf of the carrier at the hearing. Dr. K stated that he examined the claimant on January 19, 2000, and that his examination included blood testing, which was normal. Dr. K stated that he did not find any organic physical evidence that the claimant had an injury related to an exposure at work. Dr. K concluded that the claimant did not have damage or harm to the physical structure of her body as a result of a workplace exposure. However, Dr. K opined that the claimant suffers from panic/anxiety attacks from the odors at work.

The claimant had the burden to prove that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. Proof of causation in this case is a matter beyond common experience such that expert evidence was required to demonstrate the causal connection between the claimant’s alleged injury and her work. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides 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 this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer’s decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, the hearing officer determined that the claimant did not sustain her burden of proving that she sustained a compensable injury as “a result of chemical or other exposure at work on \_\_\_\_\_.” The hearing officer gave more weight to the evidence from Dr. K that the claimant did not sustain a compensable injury as a result of a workplace exposure than to the causation opinion of Drs. H, R, and J. The hearing officer was acting within his province as the finder of fact in so doing. Our review of the record does not demonstrate that the hearing officer’s determination that the claimant did not sustain a compensable injury is so against the great weight of the evidence as to be clearly wrong

or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. 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). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer’s decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge