

APPEAL NO. 002844

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 August 28, 2000. The record was left open for written closing argument with the record closing on November 6, 2000. With regard to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable occupational disease injury in the form of toxic exposure with the date of injury being _____; that the claimant gave timely notice of her injury to the employer; and that the claimant has had disability from September 6, 1993, and continuing to the date of the CCH.

The appellant (carrier) appealed the hearing officer's decision on all four issues; however, the key issue is whether the claimant sustained a compensable occupational disease on _____. The carrier contends that its evidence was more compelling than evidence to the contrary and requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responded, urging affirmance.

DECISION

Affirmed.

This is basically a battle of the experts. It is undisputed that the claimant had tuberculosis (TB) at age 15 and spent 14 months in a hospital for treatment of the TB and that the claimant smoked one to one and one-half packs of cigarettes for 19 years. The claimant began working for the employer container company as a quality control inspector in 1981. Part of the claimant's job (how much is in dispute) consisted of pulling polyethylene terephthalate (PET) soft drink bottles (a type of plastic bottle) off the line, cutting the bottle with a hot wire device (described in detail at the CCH and likened to a giant "electric charged cheese slicer") in order to inspect and weigh the pieces for quality. The process was equated to a hot knife slicing through butter. It is undisputed that the process caused some burnt PET smoke or fumes. There was expert testimony that the by-product smoke or fumes was 78% carbon dioxide, 18% acetaldehyde, and 1.9% formaldehyde.

The claimant was hospitalized with pneumonia in December 1991 and again in August of 1992. The claimant had another bout of pneumonia in May 1993 and again required hospitalization. On a form report dated _____, Dr. J, the claimant's then treating doctor, noted in the diagnosis block "myoplasma pneumonia; Possible industrial lung disease with hypersensitivity pneumonitis, possible." In the remarks section Dr. J wrote "[b]est if [claimant] did not have to cut plastic bottles [with] heat source." The claimant testified that this was the first time that she was aware that her lung problem might be work-related; that she gave this form report to her supervisor on June 30, 1993, when she returned to work; and that this constituted notice of the claimed toxic exposure. The claimant was subsequently diagnosed with hypersensitivity pneumonitis (HP). The carrier's expert testified that the claimant has chronic obstructive pulmonary disease and does not

disagree that the claimant has a pulmonary problem; rather, there is disagreement as to the cause.

Dr. K was qualified as an expert medical toxicologist and testified on behalf of the claimant and basically said that because of the claimant's history (of TB and cigarette smoking) she was more susceptible than the ordinary worker to contracting HP and that the claimant's work in cutting PET with the hot wire process was a producing cause of the claimant's disease. The carrier's medical expert was Dr. H, an environmental toxicologist (who the hearing officer incorrectly says is a medical toxicologist), who testified that the claimant's pulmonary condition was caused by the TB and years of cigarette smoking. In addition to Dr. H's testimony, the carrier presented the testimony of Ms. V, who is the employer's quality assurance manager and who was qualified as an expert in the PET bottle-cutting process and testified as to the content of the PET fumes. In addition to the testimony of the expert witnesses, the record contains written reports setting out their respective positions, and medical literature to which both sides referred.

The hearing officer at the CCH exhibited a knowledge of the chemical process and accurately summarized the testimony of the witnesses in his Statement of the Evidence. Needless to say, the testimony and evidence were conflicting. The hearing officer found that the claimant's pulmonary condition was "due to her long term exposure to PET fumes/ formaldehyde and acid aldehydes"; that the claimant first had knowledge that she might have a work-related illness on _____ (Section 408.007 defines the date of injury of an occupational disease); and that she reported the injury to her employer when she gave the employer Dr. J's report of _____. The claimant testified that she last worked on September 6, 1993. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). With the evidence in conflict, our review of the record does not indicate that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists to reverse the hearing officer's decision. Although another fact finder may well have drawn different inferences from the evidence, which would have supported a different result, that does not provide us with a basis to disturb the hearing officer's decision on appeal. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge