APPEAL NO. 002943

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 November 29, 2000. With regard to the two issues before her, the hearing officer determined that the "compensable injury of _____ [all dates are 2000 unless otherwise noted] is not a producing cause of restrictive airway disease [also referred to as restrictive airway dysfunction syndrome or RADS]" and that the appellant (claimant) had disability from _____ until March 6, when the claimant was released back to work.

The claimant appealed, essentially asserting that her expert medical evidence was more credible than expert medical evidence to the contrary and that in addition to the disability found by the hearing officer, she also had disability from May 12 through the date of the CCH. The respondent (carrier) responds emphasizing evidence to support its position and urges affirmance.

DECISION

Affirmed.

The claimant was a registered nurse and on _____ (or sometimes referred to as _____) she became short of breath and had to go outside to breathe several times while other employees were cleaning. The claimant asked what chemicals were in the cleaning supplies as she said she was allergic to phenol. Initially the claimant was told that phenol was in some of the cleaning supplies, however, evidence at the CCH developed that was not the case. The claimant went to her regular doctor and then to the emergency room (ER). A portion of the ER report indicates that the claimant was "exposed to phenol cleaning solution." The doctor noted that the claimant was hyperventilating and commented that there was "much more problems with anxiety than respiration at this point." The carrier accepted liability for an inhalation injury. The claimant was off work from _____ to March 6 when she was returned to work. The claimant continued work with some other non-related complaints until sometime in May when the claimant was exposed to fire extinguisher fumes from two leaking fire extinguishers. (The claimant has not made a separate claim for this incident.)

The claimant was eventually referred to a pulmonary specialist, Dr. N, who in reports of September 7 and 28 opined that the claimant had RADS following "prolonged exposure" to chemicals at work on _____ and that those symptoms were aggravated by the fire extinguisher incident. Dr. N testified at the CCH that he believed the claimant had RADS because of acute sudden onset rather than her condition being caused by 23 years of smoking cigarettes. The carrier's medical expert was Dr. H, an environmental toxicologist, who performed a record review and also testified at the CCH. Dr. H was of the opinion that while the claimant suffers from chronic bronchitis and pulmonary complaints, those conditions were caused by the 23 years of "tobacco abuse" and that the respiratory compromise is not causally related to the _____ incident. The hearing officer found

that the claimant's inability to obtain and retain employment at her preinjury wage after March 6 was due to "the exposure to fumes of a fire extinguisher."

The medical evidence was clearly in conflict. Whether the claimant was injured through the manner in which she claimed was a question of fact for the hearing officer to decide and had to be proved by expert medical evidence to a reasonable degree of medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The hearing officer adopted the theory advanced by Dr. H. That a different fact finder may have reached a different conclusion based on the same evidence is not a basis for us to reverse the hearing officer's decision. 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 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.). 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).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge