

APPEAL NO. 010747

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 March 16, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____. The claimant appealed, arguing that medical evidence supports a finding that she sustained a compensable occupational disease as a result of exposure to molds in a portable building in which she taught. The respondent (self-insured) submitted a response, urging affirmance.

DECISION

Affirmed.

The claimant taught fourth grade at the self-insured school district for three school years. For the first two school years, she taught in the main building. For the third year, her classroom was located in a portable building about a quarter mile from the main building. The claimant testified to having "shortness of breath, hoarseness, laryngitis, headaches, muscle cramps, nausea, fever," and weight loss. She said that students also were having similar symptoms, and missing a lot of school. She first saw a doctor about these symptoms on November 5, 1999, and was diagnosed with asthma. She lost time from work in January 2000 due to illness. The claimant owned or kept two to three horses at her residence during the 1999-2000 school year, and since that time. There was evidence that she has had allergies, dating back to when she lived in Arizona many years ago. The claimant made complaints to school officials about conditions in the portable building, including the air quality, and testing was done which showed that the level of molds that the claimant was exposed to actually were greater outdoors than they were in the portable building. The claimant resigned from her teaching position at the end of the 1999-2000 school year and had not returned to the portable building after May 19, 2000.

The claimant began treating with her doctor, Dr. P, in August 2000 for her continuing medical problems. Dr. P stated that the claimant "was found to be hypersensitive to a variety of molds, which were found to be present in significant quantities in the building that she worked in." Dr. P opined that "it is within reasonable medical probability that her complaints all stem from occupational exposure." Dr. S, made his assessment of: "Chronic laryngitis, allergic in origin and it is a reasonable medical probability that this is being caused by her workplace environment." The hearing officer pointed out that neither Dr. P nor Dr. S explain which molds the claimant is allergic to, and why she has this type of reaction to the molds when the same molds are found outside in higher concentrations than were found inside the portable building.

Dr. H performed a required medical examination on the claimant during October 1999 and testified at the CCH. He stated that chronic laryngitis is an ordinary disease of life most commonly caused by a virus; that people in portable buildings are not more likely

to suffer from chronic laryngitis; that molds do not cause chronic laryngitis, according to his research; and that exposure to horses is a more likely cause of chronic laryngitis than is exposure to a "sick building." The hearing officer gave little credence to Dr. H's ultimate opinion that exposure to molds in the portable building was not a cause of the claimant's condition; however, because the claimant's condition has improved since she no longer goes to the portable building, despite her continued proximity to her horses.

The hearing officer received substantial information about molds from both the claimant and the self-insured. There was evidence from the Texas Department of Health that "to date, no scientific or governmental body has established standards for mold levels in indoor environments."

The claimant had the burden to prove by a preponderance of the evidence that she sustained an occupational disease injury. The definition of occupational disease excludes an ordinary disease of life to which the public is exposed outside of employment. Section 401.011(34). The Appeals Panel has also required that the necessary proof of causation be established to a reasonable medical probability by expert evidence in cases such as the one we here consider where the subject matter is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. *Texas Workers' Compensation Commission Appeal No. 93774*, decided October 15, 1993; *Texas Workers' Compensation Commission Appeal No. 94815*, decided August 4, 1994. See also *Hernandez v. Texas Employers Insurance Association*, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ).

Whether the claimant sustained the occupational disease injuries she alleged was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, is to resolve the conflicts and inconsistencies in the evidence, including the medical evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate-reviewing body, we will not disturb the challenged 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 hearing officer could consider the evidence outlined above and conclude that the claimant failed to show by a preponderance of the evidence that the molds she was exposed to are different or at a higher concentration than the general public is exposed to, and that she therefore did not prove that she suffered from an occupational disease which was not an ordinary disease of life.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge