APPEAL NO. 011054
FILED JUNE 26, 2001

Following a contested case hearing held on March 12 and April 9, 2001, with the record closing on April 16, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury in the form of an occupational disease of cadmium and arsenic toxicity as of _____; that the date of the occupational disease injury is _____; that the claimant reported his injury through Dr. B not later than June 9, 2000, which preceded the 30th day after the date of the injury; and that the claimant had disability from May 29 through September 4, 2000, and for the periods of time of September 5 to 8, September 11 to 15, September 18 to 22, September 25 to 28, October 2 to 6, October 9 to 11, October 13, October 16 to 18, October 20, and October 25 to 26, 2000. The appellant (carrier) has appealed these determinations on evidentiary sufficiency grounds. The claimant's response details the evidence supportive of the challenged determinations and also complains of the hearing officer's abuse of discretion in not permitting the claimant to adduce certain evidence.

DECISION

Affirmed.

The claimant's response to the carrier's appeal is not timely as an appeal and, consequently, we will not address the evidentiary rulings complained of by the claimant. Further, the hearing officer's determination excluding lead from the heavy metals to which the claimant was exposed on the job has not been appealed.

The hearing officer did not err in reaching the challenged determinations. The claimant testified in detail to the types of repairs he had made for nearly seven years on air conditioning and heating units of the employer's customers and he identified certain solder, welding gas, and other materials which, according to the Material Safety Data Sheets and other evidence, exposed him to cadmium, lead, and arsenic. He explained that while his coworkers, who apparently did not suffer from heavy metals toxicity, merely replaced or exchanged parts in defective units at customers' sites, he often rebuilt certain parts such as drivers, which required scraping, brushing and welding, and he also replaced circuit boards, both being processes which exposed him to cadmium and arsenic and being particular duties that his coworkers did not do. The claimant also adduced evidence indicating that his family did not have elevated levels of cadmium and arsenic. The claimant's treating doctor, Dr. B, who treated the claimant's heavy metals poisoning with EDTA chelation therapy, testified that his review of various tests of the claimant's blood, urine, and hair demonstrated elevated levels of the heavy metals at issue and that in his opinion the claimant inhaled these metals when performing his tasks at various work sites.

The hearing officer found, among other things, that during a period of time before May 29, 2000, the claimant was repeatedly exposed to the heavy metals of cadmium, lead,

and arsenic causing a toxicity in his body; that he was exposed to cadmium and arsenic as by-products of his use of materials in his work but that he was exposed to lead at some unknown place and time; and that the claimant sustained an occupational disease injury in the form of cadmium and arsenic toxicity/poisoning that arose out of and in the course and scope of his employment. These findings essentially determined the outcome of the other disputed issues. The facts in Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991, the first heavy metals exposure case considered by the Appeals Panel, are not dissimilar to the facts in the instant case and that case is instructive on the law in this area. 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, 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)). The Appeals Panel, an appellate reviewing tribunal, 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge