

APPEAL NO. 011191
FILED JULY 11, 2001

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 May 2, 2001. The hearing officer resolved the disputed issues by determining the following:

1. The appellant (claimant) did not sustain a compensable injury;
2. The correct date of the claimant's injury is _____;
3. The claimant timely reported her injury to the employer on May 31, 2000;
and
4. The claimant did not have disability.

The claimant appeals the hearing officer's determinations asserting that an air quality report and medical evidence support a finding that she sustained a compensable injury as a result of exposure to mold and mildew in a portable building in which she taught. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant was employed as a music teacher by an independent school district (employer) for 23 years. At the beginning of the 1999-2000 school year, the claimant was assigned to teach in a portable building that was located away from the main school structure. The claimant testified that the classroom was infested with rodent droppings; that pieces of ceiling and floor tiles were missing; that water stains were on the ceiling and walls; and that there was mold and mildew growth on the walls. The claimant testified that over a two-year period she reported the condition of the classroom to her supervisors and requested that repairs be made. At the CCH, the claimant testified that she was allergic to horse hair, cats, chickens, meat, cedar trees, grass, mold and mildew; however, she developed a shortness of breath and increased allergy symptoms due to the exposure to the classroom environment.

The employer requested an air quality study (Claimant's Exhibit No. 13) that revealed that there were clusters of building-related symptoms along with areas of water intrusions and musty odors, and that "the inside microbial counts and profiles were higher as compared to the outside, suggesting interior microbial growth." The claimant testified that her shortness of breath improved when she was away from her classroom during the summer and holidays; however, her condition resumed and worsened when she returned to teach in the portable building.

In January 2001, the claimant's treating physician, Dr. J, diagnosed the claimant

with allergy problems and asthmatic bronchitis, and stated that her condition “may be due to [an] environmental problem at school.” Dr. J referred the claimant to Dr. A, a pulmonary specialist, and he agreed with the asthma diagnosis; however, he stated that “whether the symptoms are related to work or not are a bit unclear” and “this region of Texas is especially bad regarding molds and mildews.”

The Appeals Panel has held that a claimant in a workers’ compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of employment. Texas Workers’ Compensation Commission Appeal No. 992860, decided February 4, 2000, citing Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer found that although the claimant does appear to be allergic to substances listed in the air quality report, the claimant failed to prove her asthma is inherent in her occupation as a school teacher, or present to an increased degree in members of the teaching profession; thus the claimant failed to prove that her asthma constitutes an occupational disease as opposed to an ordinary disease of life. Section 401.011(34) defines an occupational disease as arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is incident to a compensable injury or occupational disease.

The Appeals Panel has held that to establish that the claimant has an occupational disease, the claimant’s evidence must show a causal connection between the employment and the disease. Texas Workers’ Compensation Commission Appeal No. 91002, decided August 7, 1991. The claimant asserts on appeal that the air quality report in evidence, which refers to two allergens, Alternaria and Penicillium, that were found inside her classroom and to which she is allergic, is sufficient evidence to establish her burden of proof that the classroom condition caused her to develop an occupational disease, asthma. We disagree. The Appeals Panel has held that the necessary causal connection between the particular disease and the workplace must be established by expert medical evidence, to a reasonable medical probability. Texas Workers’ Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers’ Insurance Association, 612 S.W.2d 199 (Tex. 1980). The hearing officer determined that the medical records in evidence did not indicate that the claimant was sensitive to any particular injurious substances which were present in the claimant’s classroom. The medical reports from Dr. J and Dr. A do not link the allergens, Alternaria and Penicillium, found in the portable building to the claimant’s asthma. Additionally, the claimant contends on appeal that an allergy skin test showed she was allergic to both Alternaria and Penicillium; however, this test was not in evidence at the CCH. Also, we note from the air quality report in evidence that the count for Alternaria in the claimant’s classroom was zero. Whether the necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers’ Compensation Commission Appeal No. 94266, decided April 19, 1994. See also Appeal No. 992860, *supra*.

The claimant's case is similar to the facts in Texas Workers' Compensation Commission Appeal No. 010747, decided May 14, 2001, in which the claimant in that case taught in a portable building and suffered from shortness of breath, hoarseness, laryngitis, headaches, muscle cramps, nausea, fever, and weight loss symptoms. The claimant was diagnosed with asthma. The treating physician opined that "it is within reasonable medical probability that her complaints all stem from occupational exposure." The hearing officer found that the doctor did not "explain which molds the claimant is allergic to, and why she has this type of reaction to molds when the same molds are found outside in higher concentrations than were found inside the portable building." The Appeals Panel affirmed the hearing officer's determination 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." In the case at bar, the evidence supports the hearing officer's determination that the medical evidence did not explain how the allergens in the classroom are inherent to the claimant's development of asthma as an occupational disease as opposed to an ordinary disease of life.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence (Section 410.165(a)). It is for the hearing officer to resolve the inconsistencies and conflicts 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 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 hearing officer's decision and order are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge