

APPEAL NO. 011215  
FILED JULY 16, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 010593, decided April 20, 2001. We had remanded the case for the hearing officer to reconsider his determination to exclude an exhibit offered by the appellant (carrier herein) and to reconsider the issues of injury and disability in light of this. On remand the hearing officer, decided it was not necessary to hold a hearing on remand, but did decide to admit the exhibit he had excluded at the initial contested case hearing (CCH). The hearing officer then determined that based upon the evidence admitted at the initial CCH and the excluded exhibit which he had not admitted, the respondent (claimant herein) sustained a compensable injury on \_\_\_\_\_, and had disability from July 29, 2000, continuing through the date of the original CCH, February 27, 2001. The carrier appeals, contending that these determinations were not supported by the evidence and requesting that we reverse the decision of the hearing officer. There is no response to the carrier's appeal from the claimant in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The questions of injury and disability are issues of fact. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We simply do not find that to be the case here.

The hearing officer here found that the claimant suffered a conversion reaction due to exposure to epoxy fumes at work which resulted in abnormal motion of his vocal cords, stridor, and shortness of breath and which caused the claimant to have disability. These findings are supported by the testimony of the claimant and medical evidence. There was certainly contrary evidence, including the exhibit that was admitted on remand. However, it was the function of the hearing officer to resolve the conflicts in the evidence and to determine the weight to give to the evidence.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

DISSENTING OPINION:

I dissent and agree with the carrier that no “exposure,” as opposed to detection of a smell, was proven. I simply cannot agree with the hearing officer’s bland assertion that it was not necessary to offer some proof of what the substance was and what exposure occurred. I note that the material data safety sheet for epoxy resin, the substance identified by the claimant in his testimony and on a hospital record, identifies essentially no respiratory effects from normal usage.

When one has an underlying disease whose very nature is a reaction to smells or dust in the air, an experience of the expected reaction is not a new “injury” but a manifestation of the underlying ordinary disease of life. This is a situation very similar to that in Hernandez v. Texas Employers Insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ). Because Dr. M’s opinion assumes an unproven “exposure,” it can be no better than the underlying assumption. I would reverse and render that the hearing officer’s opinion is against the great weight and preponderance of the evidence.

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Susan M. Kelley  
Appeals Judge