

APPEAL NO. 011491  
FILED AUGUST 6, 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 29, 2001. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had sustained an occupational disease ("neurotoxic damage . . . caused by n-hexane"); that the claimant's date of injury is \_\_\_\_\_; that the claimant timely reported his injury to the employer; that the respondent (carrier) had not timely contested compensability; and that the claimant did not have disability. Only the disability issue is appealed and the hearing officer's decision on the other issues has become final pursuant to Section 410.169.

The claimant appeals the disability issue, contending that he "is 100% disabled" as is evident to anyone who sees him and as supported by the medical evidence. The claimant asserts (incorrectly) that the carrier "has never contested the fact that [claimant] is disabled." The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant began working in the employer's chemical plant in 1973. The vast majority of the CCH dealt with the claimant's exposure to n-hexane, whether that exposure caused the claimant's neurological condition, and whether the claimant timely reported his injury. The hearing officer's determinations on those issues have become final. In 1995, the claimant developed some cervical problems with radiculopathy in both arms. The claimant had cervical surgery in September 1995. The claimant subsequently returned to work at light duty (presumably at his preinjury wage) with some restrictions on standing and lifting. The claimant was given an office job but continued to have neck pain and balance problems. The claimant's doctors recommended that he retire and the claimant took medical retirement on February 1, 1997, because of his neck condition. Some of the claimant's symptoms remained relatively stable and other symptoms, such as "spacity," grew worse. The claimant was referred to a neurologist who, on April 21, 1999, was of the opinion that the claimant had sustained an occupational disease exposure to n-hexane.

The claimant, in his opening statement at the CCH, asserted that he was "entitled to compensation for the time lost due to his retirement in April of '99." The claimant testified that he has been unable to work since he took medical retirement and that he has "remained continuously on disability since that time." The claimant's appeal emphasizes that he is "100% disabled" and that he has "100% disability."

The term "disability" has specific meaning in the 1989 Act and is specifically defined in Section 401.011(16) as "the inability because of a compensable injury to obtain and retain

employment” at the preinjury wage. The evidence is virtually undisputed that the claimant's inability to obtain and retain employment at the preinjury wage in February 1997 was because of his cervical injury rather than as the yet to be diagnosed and reported toxic exposure injury two years later. The hearing officer specifically found that the claimant “was not earning any [wages] between February 1, 1997 and April 21, 1999” and that the claimant's compensable injury “did not prevent him from earning the wages he earned before \_\_\_\_\_” (the date of injury). In essence, the hearing officer found that the claimant's inability to obtain and retain employment at his preinjury wage was not because of the compensable injury but rather was because of the claimant's medical retirement in February 1997 due to his neck injury. The claimant may well now have a “very debilitating condition” but his inability to obtain and retain employment at his preinjury wage, as found by the hearing officer, was due to the claimant's February 1997 medical retirement rather than the compensable 1999 occupational disease.

The hearing officer's decision on this issue is supported by the evidence and is not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order on the appealed issue are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Manager/Judge