

APPEAL NO. 011593
FILED AUGUST 22, 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 June 13, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable reactive airway dysfunction syndrome (RADS) injury on September 27, 2000, and that the claimant did not have disability. The claimant appealed and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant's primary contentions on appeal are that the hearing officer erred in interpreting the evidence and in placing "an impermissibly high burden of proof upon the claimant." We reject these contentions. We conclude that the hearing officer properly stated and applied the burden of proof. We view the hearing officer's Statement and Discussion of the Evidence as simply his commentary on and his explanation for concluding that the claimant failed to meet his burden of proof.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm. Section 401.011(26). The definition of disease includes occupational diseases. An occupational disease is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). To establish that he has an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease, that is, the disease is inherent in the employment as opposed to employment generally or at least present in an increased degree. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Where, as here, the causal connection is not a matter of general knowledge, it must be proven to a reasonable medical probability by expert evidence. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93668, decided September 14, 1993; Texas Workers' Compensation Commission Appeal No. 94254, decided April 14, 1994. The fact that the proof of causation may be difficult does not relieve the claimant of the burden of proof. Texas Workers' Compensation Commission Appeal No. 93665, decided September 15, 1993. The effects of chemical inhalation and the resultant effect on the body are matters

beyond common experience and medical evidence should be submitted to establish causation as a matter of reasonable medical probability as opposed to possibility, speculation or guess. See Appeal No. 94254, *supra*. 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.

The hearing officer is the sole judge of the relevance and materiality of the evidence and or its weight and credibility. Section 410.165. The hearing officer judges the weight to be given to the expert medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer may believe all, part, or none of the testimony of any witness. Nothing in our review of the record indicates that the hearing officer's determinations are so against the great weight of the evidence as to be clearly wrong and unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge