APPEAL NO. 011989
FILED OCTOBER 2, 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 was held on June 27, 2001. She determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that had there been a finding of a compensable injury, the date of injury would be _____; that the self-insured respondent ("carrier" herein) is not relieved from liability due to claimant's failure to timely notify the employer of the claimed injury; that carrier is not relieved from liability due to claimant's failure to timely file a claim for compensation within one year of the date of the claimed injury; and that claimant did not have disability. On appeal, claimant expresses disagreement with the hearing officer's findings that he did not sustain a compensable injury and did not have disability. Carrier urges affirmance.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not sustain an occupational disease injury and that he did not have disability. An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body . . . ." Section 401.011(34). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. 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 found that claimant's health conditions, including oral candida, chronic sinusitis and allergic rhinitis were not sustained while in the course and scope of his employment, and that he did not sustain a compensable injury or disablity. The complained-of determinations regarding injury and disability are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

To the extent that claimant contends the hearing officer erred in excluding certain photographs depicting the workplace in question, we note that the standard of review for such exclusion is one of abuse of discretion. To obtain a reversal based on abuse of discretion due to the exclusion of a piece of evidence, an appellant, claimant in this case, must show that the ruling was in error, and that the error was calculated to cause and probably did cause the rendition of an improper decision. Boothe v. Hausler, 766 S.W.2d 788, 789 (Tex. 1989); Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). Reversible error does not usually occur in connection with evidentiary rulings unless the appellant can demonstrate that the whole case turns on the particular evidence excluded, in this case the photographs. The claimed injury is an occupational disease, and

the case turned on whether claimant proved a causal connection between the disease and the workplace. In this case, claimant did testify and describe the various problems at his place of employment, including ceiling leaks, mold, and carpet problems. The hearing officer stated that there was evidence that a mold problem existed in the workplace, but found claimant did not meet his burden to prove a causal connection to the disease process. Consequently, we find no reversible error in the hearing officer's exclusion of the photographs. Similarly, we perceive no reversible error in the exclusion of the nurses' slips through which claimant sought to show others' illnesses. Claimant was required to provide evidence showing a causal connection between the disease and the workplace. We conclude that claimant has not shown that any possible error was calculated to cause and probably did cause the rendition of an improper decision.

We note that, generally, we will consider only the evidence admitted at the hearing and do not consider evidence raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that case be remanded for further consideration, we consider whether it came to appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the information that claimant included in his request for review and, consequently, it will not be considered on appeal.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is _____ and the name and address of its registered agent for service of process is

THE ALAMO GROUP
ATTN: STEVE TOVAR
2515 BOBCAT LANE
SAN ANTONIO, TEXAS 78224.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge