APPEAL NO. 013084
FILED FEBRUARY 11, 2002

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 November 14, 2001, in (city 1). The hearing officer resolved the disputed issues before her by determining that (1) the respondent's (claimant) injury sustained on _____, includes hemoptysis; (2) that the claimant sustained disability from April 10, 2000, through April 23, 2000; and (3) that the appellant (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified his employer pursuant to Section 409.001. The carrier appealed, asserting that the hearing officer committed reversible error by admitting two doctor's reports, and that her decision is otherwise not legally or factually supported by the evidence. There is no response from the claimant in the file.

DECISION

We affirm.

The claimant was employed as a blade operator and supervisor for the employer's construction company. The claimant testified that on _____, his crew was working at a road construction site. The claimant testified that a chemical powder known as fly ash was being incorporated into the roadbed for stability; that there was an accidental spill of the fly ash into the open traffic lane; that before the fly ash could be cleaned off of the traffic lane, a cattle truck ran over it; and that the fly ash became airborne and struck the claimant in the face, causing him to inhale it. The claimant testified that he felt an initial burning sensation, but that he spit the fly ash out and continued to work. The claimant testified that while at home that evening, he sneezed and a little blood came out; that the next day he felt a rattle in his throat and when he went to clear his throat, blood came gushing out and he began to hemorrhage; that the claimant was taken to the emergency room in (city 2) where Dr. C determined he needed to be sent to city 1; that the claimant was transported to city 1, where he saw Dr. J, a pulmonologist. The claimant was diagnosed with hemoptysis. The claimant's supervisor testified that shortly after the accident, the claimant told him he was in the hospital because he had been spitting up blood, possibly from the fly ash. The supervisor stated that he thought this was something that had come on through the years, not a specific event.

On appeal, the carrier asserts that the hearing officer erred in her determination that the claimant sustained an injury and had disability. The carrier contends that the hearing officer reached this wrong conclusion because she erroneously admitted, and relied upon, reports from Dr. C and Dr. J. This error, the carrier contends, caused the rendition of an improper judgment. The carrier argues that this is a case of an occupational disease in the form of chemical exposure, and that the claimant cannot meet his burden of proof without expert medical testimony (or evidence). The carrier argues that the reports of Dr. C and Dr. J should have been excluded because they are not experts, that is to say they are not toxicologists, and therefore not qualified to give an opinion as to how the claimant

developed hemoptysis. *See* Merrell Dow Pharm., Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997); E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995). The carrier argues that the claimant presented no expert testimony (or evidence).

We disagree with the carrier's assertion that the hearing officer committed reversible error by admitting the reports from Dr. C and Dr. J. Section 410.165(b) provides that a hearing officer "shall accept" a signed report from a health care provider and that based upon that provision we have previously determined that Havner and Robinson do not provide a basis for excluding opinions in an administrative workers' compensation proceeding. To the contrary, the factors advanced by those cases can be considered by the fact finder in making his or her credibility determinations. *See* Texas Workers' Compensation Commission Appeal No. 001426, decided August 2, 2000; Texas Workers' Compensation Commission Appeal No. 000651, decided April 11, 2000; and Texas Workers' Compensation Commission Appeal No. 991964, decided October 25, 1999.

The issue at the hearing as to injury was phrased as follows, "Does the injury sustained on _____ include Hemoptysis?" Upon review of the record before us, we cannot agree that this is a case of an "occupational disease." The hearing officer determined that the evidence showed the claimant was exposed to the fly ash on a specific day; had an almost immediate onset of symptoms; was diagnosed with hemoptysis by a pulmonologist two days later; and had disability from April 10, 2000, through April 23, 2000, due to his compensable injury. The hearing officer's determinations as to injury and disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Equally supported by the evidence is the hearing officer's determination that the claimant timely notified his employer of his injury pursuant to Section 409.001, and that the carrier is not relieved of liability pursuant to Section 409.002.

We affirm the hearing officer's decision and order.

According to information provided by the carrier, the true corporate name of the insurance carrier is **FREMONT COMPENSATION COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge