

APPEAL NO. 020664  
FILED MAY 2, 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 February 20, 2002. The hearing officer resolved the disputed issue before her by determining that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, because the exacerbation of her preexisting respiratory difficulties by mold in her office constitutes an ordinary disease of life. The claimant appealed and the respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant argues that the hearing officer's determination that she did not sustain an injury in the form of a occupational disease is against the great weight and preponderance of the evidence. The Appeals Panel has previously held that to sustain her burden of proving a compensable occupational disease, the claimant must "demonstrate a causal connection between her employment and the disease; that is, the disease must either be indigenous to the employment or present in an increased degree." Texas Workers' Compensation Commission Appeal No. 94082, decided March 4, 1994. In this instance, the crucial question is that of whether the claimant has demonstrated a causal connection between the exacerbation of her preexisting respiratory difficulties and allergy symptoms and her employment. The claimant has the burden of proving causation, by a preponderance of the evidence. Appeal No. 94082, *supra*. We have noted on many occasions that where, as here, the matter of causation is outside common experience, expert testimony is required to establish that the disease is causally connected to the employment. Texas Workers' Compensation Commission Appeal No. 93939, decided November 24, 1993.

The hearing officer found as fact that the claimant's work area with the employer was contaminated with various types of mold, including *Stachybotrys*, *Alternaria*, *Aspergillus*, and *Penicillium*; that due to her preexisting respiratory difficulties, the claimant is unusually sensitive to any adverse health effects which may be caused by *Stachybotrys*, *Alternaria*, *Aspergillus*, and *Penicillium*; that between March of 2001 and \_\_\_\_\_, the claimant's workplace exposure to *Stachybotrys*, *Alternaria*, *Aspergillus*, and *Penicillium* caused the claimant to experience an aggravation of her preexisting respiratory problems; that members of the general public, outside of employment, may experience adverse health effects as a result of exposure to *Stachybotrys*, *Alternaria*, *Aspergillus*, and *Penicillium*; and that the exacerbation of her preexisting respiratory difficulties as a result of her workplace exposure to mold is not indigenous in the claimant's employment or present to an increase in that employment.

The employer had testing done in and around the claimant's workstation. The test results showed that "[a]ll samples collected revealed elevated levels of mold (Stachybotrys, Fusarium, Aspergillus/Penicillium, Alternaria and Amerospores) throughout the building due to this contamination." The test further states that "[t]hese levels may cause some adverse health effects to individuals with existing respiratory problems, immune system depression, and individuals who have had recent surgery." In conclusion, the report states that "[t]he source creating the mold should be repaired/replaced and all molds should be removed as soon as feasibly possible. There should be an evacuation of the office area as soon as possible due to the elevated levels of Stachybotrys."

We determine that the hearing officer has committed legal error in misapplying the law concerning causation in an occupational disease case. The hearing officer has, in effect, found that although the claimant's exposure to the several molds found in her work area aggravated her preexisting respiratory problems, the claimant failed to prove causation because members of the general public, outside of employment, may experience adverse effects from exposure to these molds and because the claimant did not prove that the exacerbation of her preexisting respiratory difficulties from her workplace exposure to molds was indigenous to the claimant's employment or present to an increased degree in that employment. In Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996, we reversed and remanded in a repetitive trauma case where this hearing officer stated that the employee must not only prove that his alleged repetitive trauma injury "was not only caused by his employment, but was inherent in that employment, or present to an increased degree in that employment, as it compared with employment generally." Our opinion explained why we felt that this hearing officer had applied an incorrect legal standard for determining causation in an occupational disease case and we cited various authorities. See also Parker v. Employer's Mutual Insurance Company of Wisconsin, 440 S.W.2d 43 (Tex. 1969), a case involving a claim of cancer from exposure to radioactive material, in which the court stated that "[t]he sine qua non test must be met: but for the conduct or condition, in this case the employment, would the plaintiff have suffered the harm?" In Texas Workers' Compensation Commission Appeal No. 91026, decided October 18, 1991, a case involving repetitive trauma, the Appeals Panel stated that "[w]hether the issue of causation is framed in terms of the disease being indigenous to the work or present in an increased degree [citation omitted], as urged by appellant, or that the disease must be inherent in that type of employment [citation omitted], or but for the employment, would claimant have suffered the harm [citation omitted], what is required is evidence of probative force of a causal connection between the employment and occupational disease [citation omitted]." See also Texas Workers' Compensation Commission Appeal No. 011785, decided September 10, 2001.

In Appeal No. 961008, *supra*, we reversed and remanded for the hearing officer to further consider the evidence applying a correct analysis of causation. We remanded because there was some evidence that other, nonwork-related activity may be of significance and this was a matter for the fact finder to determine. However, in the case we here consider, the findings support the conclusion that the claimant did indeed sustain a compensable occupational disease injury and there is no evidence of causation outside

the employment. Accordingly, we reverse the hearing officer's conclusions of law that the claimant did not sustain a compensable injury on \_\_\_\_\_, and that the exacerbation of her preexisting respiratory difficulties constitutes an ordinary disease of life and her decision and order. We render a new decision that the claimant sustained a compensable occupational disease injury on \_\_\_\_\_.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge