APPEAL NO. 022937
FILED DECEMBER 19, 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 (CCH) was held on October 30, 2002. With respect to the sole issue before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease with a date of injury of _____. The claimant appealed, contending that the evidence was sufficient to establish that he sustained a chemical inhalation injury in the course and scope of his employment and that the respondent (carrier) failed to prove that the claimant had an "existing illness." The carrier responded, urging that the hearing officer be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, he was exposed to a spilled substance, Dowtherm, while at work; that he inhaled the substance, and it caused him to have reactive airway disease (RAD). The claimant's treating doctor testified that he believed that the claimant's condition was caused by his exposure to/inhalation of the Dowtherm. The carrier presented the testimony of another doctor, who said it would have been highly unlikely that such a small amount spilled (reported to be one gallon) would have caused the claimant's RAD or any other condition. The hearing officer wrote that the claimant failed to show that his exposure to Dowtherm caused his RAD, and discounted the testimony of the treating doctor as the treating doctor had not tested the claimant to determine the amount, if any, of Dowtherm in his system. In addition, the hearing officer noted that the material safety data sheet indicated that the amount spilled and subsequently, allegedly, inhaled by the claimant was insufficient to cause damage or harm to the physical structure of the claimant's body. The claimant had the burden to prove that he was injured by the exposure/inhalation of the noxious substance. The carrier is not required to prove that the claimant's condition was preexisting.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We do not find so here.

The decision and order of the hearing officer are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge