

APPEAL NO. 031618
FILED AUGUST 11, 2003

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 May 28, 2003. The hearing officer determined that respondent/cross-appellant (claimant) sustained a compensable injury but that he did not have disability. Appellant/cross-respondent (carrier) appealed the determination that claimant sustained a compensable injury. The file does not contain a response from claimant. Claimant appealed the determination that he did not have disability. Carrier responded that the Appeals Panel should affirm the hearing officer's determination regarding disability.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that on _____, claimant sustained a compensable injury. There was evidence that claimant and a coworker lost consciousness at work while cleaning out a tank at a refinery. Claimant was taken to the hospital where he complained of headache, skin irritation, and nausea. There was evidence that a rescue worker had fainted and another rescue worker began vomiting after the EMS call was completed. In written statements, rescue workers reported strong odors or fumes from claimant's clothing. There was evidence that testing showed that air samples were within acceptable levels and that in tests of claimant's coworker's clothing, no harmful substances were detected. Claimant's grandmother testified at the hearing and stated that she is claimant's legal guardian and that he now needs constant care.

Carrier contends that claimant's only theory of recovery involved a claim of long-term mental and neurological damage due to the effects of toxic exposure from an unknown substance, and no other injury. However, the record does not reflect that this was claimant's only claimed injury. The hearing officer could find from the evidence that claimant sustained a compensable injury. See Texas Workers' Compensation Commission Appeal No. 931101, decided January 14, 1994. The fact that others were also affected supports the claimant's theory that the immediate condition he was treated for on _____, was work related. Concerning the need for expert testimony to establish what caused the injury, we have noted that lay testimony may support compensability of immediate short-range effects of exposure to chemicals and fumes even when expert medical evidence is required to establish linkage to an alleged brain or neurological injury. See Texas Workers' Compensation Commission Appeal No. 94824, decided August 10, 1994. In making her determination that claimant sustained a specific injury, the hearing officer could consider the sequence of events, the prompt onset of symptoms, and the similar physical effects others experienced. See Texas Workers' Compensation Commission Appeal No. 960896, decided June 26, 1996. See *also Morgan v. Compugraphic Corporation*, 675 S.W.2d 729 (Tex. 1984); Texas

Workers' Compensation Commission Appeal No. 000651, decided April 11, 2002; Texas Workers' Compensation Commission Appeal No. 93668, decided September 14, 1993. We have reviewed the complained-of determination and conclude that the issue involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination that claimant sustained a compensable injury is supported by the record and is 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).

Claimant contends that the hearing officer erred in determining that claimant did not have disability due to a brain injury. Claimant asserts that he clearly has disability even though he lacks the "technical expertise and money to identify the exact nature and cause of his obvious brain injury." Claimant contends that either hydrocarbons or "some other gas" caused claimant, his coworker, and others to be "overcome" and/or rendered unconscious and caused a brain injury to claimant. Although the evidence supports the hearing officer's determination that claimant sustained immediate effects from a specific injury, the hearing officer could find from the evidence that claimant did not establish disability due to a brain injury caused by any chemical exposure to a gas. The hearing officer indicated that she believed that claimant has been unable to obtain or retain employment at his preinjury wage, but that the evidence did not establish the cause of the catastrophic injury alleged to have caused such inability. We conclude that the hearing officer's determination regarding disability is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Appeal No. 94824.

We affirm the hearing officer's decision and order.

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

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge