

APPEAL NO. 031648
FILED AUGUST 14, 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 appellant/cross-respondent (claimant) sustained a compensable injury, but that the injury did not extend to reactive airway disease (pulmonary problems), neurological deficit, and/or headaches. Claimant appealed the determination regarding extent of injury on sufficiency grounds. Respondent/cross-appellant (employer) appealed the determination that claimant sustained a compensable injury. Respondent (carrier) responded that the hearing officer did not err in making the determination regarding extent of injury.

DECISION

We affirm.

Carrier accepted liability in this case, though it disputed the extent of the claimed injury. The employer disputed the compensability of the claimed injury and was a party at the hearing. Employer appeals the hearing officer's determination that claimant sustained a compensable injury, contending that he claimed an injury only due to hydrogen sulfide exposure and that claimant denied any injury other than breathing problems, headaches, and memory loss due to the incident of _____. However, the record reflects that claimant claimed an injury due to "some form of chemical." Although at one point claimant appeared to limit the types of injuries he claimed, he also said in closing argument that he claimed "physical injury" generally and numerous other named conditions.

There was evidence that claimant and a coworker both lost consciousness at work while cleaning out a tank at a refinery. Claimant was taken to the hospital where he complained of chest pain and shortness of breath and his coworker complained of symptoms including skin irritation. 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 clothing, no harmful substances were detected. About one week after the incident, claimant complained of burns to his upper extremities and such were noted. In a December 9, 2002, report, Dr. H stated that claimant did not sustain an injury but that he suffered from "temporary complaints" that are more readily explained as physiologic reactions to dehydration or "heat exhaustion" while working in a tank in the hot summer sun. 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 27, 1996. We have reviewed the complained-of determination and

conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination 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 the hearing officer erred in determining that the injury did not extend to reactive airway disease (pulmonary problems), neurological deficit, and/or headaches. Concerning the need for expert testimony to establish the cause of an injury, we have noted that lay testimony may support compensability of immediate short-range effects of exposure to chemicals and fumes, but that expert medical evidence is required to establish linkage to later developing chronic syndromes, such as an alleged brain or neurological injury. See Texas Workers' Compensation Commission Appeal No. 94824, decided August 10, 1994. We conclude that the hearing officer's determination 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.

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