APPEAL NO. 040759
FILED MAY 24, 2004

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 February 20 and continuing on February 23, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appealed, arguing that the injury and disability determinations are so against the overwhelming preponderance of the evidence as to be clearly wrong and manifestly unjust. The claimant additionally argues that the hearing officer applied incorrect legal standards. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he was exposed to anhydrous ammonia on _____, while in the course and scope of his employment repairing the compressor of an industrial cooling system. Although the hearing officer was persuaded that the claimant was exposed to anhydrous ammonia while in the course and scope of his employment on _____, he was not persuaded that such exposure was a producing cause of the claimant's airway pathology, including irritant induced asthma, pulmonary diffusing defect, or obstructive airway disease. The claimant had the burden to prove he was injured by the exposure/inhalation of the anhydrous ammonia. The claimant maintains that the only legally competent evidence on the issue of the work-related irritant induced asthma and its causation was the unchallenged and uncontroverted testimony of Dr. C.

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 to 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 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Where, as here, the causal connection is not a matter of general knowledge, it must be proven to a reasonable medical probability by expert medical evidence. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 94254, decided April 14, 1994. Whether the necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 021402, decided July 18, 2002; Texas Workers' Compensation

Commission Appeal No. 020957, decided June 5, 2002. We find no merit in the claimant's contention that the hearing officer substituted his own medical and scientific opinions for that of Dr. C or that the hearing officer failed to apply the correct legal standard in applying the definition of injury. Nothing in our review of the record indicates that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong and unjust. Accordingly, no sound basis exists for us to disturb the injury determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

Section 410.151(b) precludes consideration of an issue not raised at the benefit review conference (BRC) unless the parties consent or the Texas Workers' Compensation Commission determines that there was good cause for not raising the issue at the BRC. The hearing officer did not err when he declined to add or reword the issue to include a repetitive exposure injury.

The claimant contends that it was error for the hearing officer to fail to make findings regarding alleged fraud on the part of the employer and carrier. Finally, we find no reversible error based upon the claimant's assertion of fraud by the employer and carrier. We note that there was no issue concerning these matters before the hearing officer. Further, the claimant made the same arguments at the CCH that he presents on appeal regarding the allegations and their effect on the credibility of the evidence admitted at the CCH.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **UTICA NATIONAL INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Daniel R. Barry
Appeals Judge