

APPEAL NO. 041373
FILED JULY 26, 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 was held on May 4, 2004. The hearing officer determined that the appellant (claimant) sustained a compensable injury in the form of an occupational disease with a date of injury of _____, and that the compensable injury includes the condition of asthma, but does not include the conditions of hypertension, demyelinating disease, immune mechanism disorder, immune dysfunction, cognitive dysfunction, and exposure to toxigenic mold (referred to as the claimed conditions). The hearing officer further determined that the claimant did not have disability; that the respondent (carrier) had waived the right to contest compensability by not timely contesting the injury; and that the claimant is not barred from receiving workers' compensation benefits due to an election of remedies. The hearing officer's determinations on compensability, carrier waiver, and election of remedies have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals the determinations that the compensable injury does not extend to the claimed conditions and that the claimant did not have disability based on her testimony (and some medical evidence) that she has the claimed conditions and the claimed conditions preclude her return to her preinjury job. We view the claimant's appeal as a sufficiency of the evidence appeal. The carrier responds, urging affirmance.

DECISION

Affirmed as reformed.

Initially we note that the hearing officer's findings of fact have two Findings of Fact No. 5. We reform the hearing officer's decision and order to renumber Findings of Fact No. 5 as No. 5 and 5(a). As stated above we have reviewed the claimant's appeal on the extent of the claimed conditions and disability on sufficiency of the evidence grounds.

It is undisputed that portions of the building in which the claimant worked were flooded by a hurricane in early June 2001. The claimant testified that the building was closed for several weeks for rehabilitation and clean up. The preponderance of the evidence also supports the hearing officer's comment in the Background Information that the claimant "has a long history of asthma and allergic reactions to her environment." The carrier failed to timely contest an allergic reaction injury and the hearing officer determined that the claimant sustained a compensable allergic reaction/asthma injury. The claimant alleges the other claimed conditions were caused by exposure to molds due to the flooding. The claimant testified that the employer accommodated her by allowing her to work from home for about a year. The claimant

first began missing time from work in June 2002. The project engineer for an air testing firm testified regarding the various air testing that was done. Dr. C, the claimant's current treating doctor, who began treating the claimant in October 2001, after extensive testing, diagnosed the claimed conditions. D. F the carrier's required medical examination doctor, essentially testified that the claimant only suffers from allergies present in the air unrelated to the condition in the claimant's place of employment.

The claimant's appeal stresses that she had disability because she had only been released to light duty. The claimant had the burden to prove that she sustained a compensable injury as defined in Section 401.011(10) and Section 401.011(34) and that she had disability as defined in Section 401.011(16). The question before the hearing officer was whether the compensable injury extended to include the claimed conditions. Conflicting evidence was presented and there were conflicting medical opinions. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). While the claimant's appeal of the disability issue contains some principles with which we agree, the main basis for the disability was the claimed conditions. In that we are affirming the hearing officer's decision regarding the claimed conditions, we also affirm the hearing officer's determination on disability.

The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are 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). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order, as reformed, are affirmed.

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

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge