

APPEAL NO. 080787
FILED AUGUST 12, 2008

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 May 5, 2008. The hearing officer resolved the disputed issues by deciding that: (1) the appellant/cross-respondent (claimant) sustained a compensable injury; (2) the date of injury is _____; (3) the respondent/cross-appellant (self-insured) is not relieved from liability under Section 409.002 because the claimant timely notified her employer of a work-related injury pursuant to Section 409.001; and (4) the claimant did not have disability beginning November 1, 2007, and continuing through the date of the CCH. Both parties appealed. The claimant appealed, disputing the disability determination. The self-insured responded, urging affirmance of the disability determination. The self-insured also appealed, disputing the determinations of compensable injury, timely notice, and date of injury.

DECISION

Affirmed in part and reversed and rendered in part.

COMPENSABLE INJURY

The claimant testified that she worked as a school bus driver for the self-insured. She alleged that she sustained a compensable injury as a result of inhaling fumes from the bus she drove for the self-insured. In the “[Self-insured’s] Employee’s First Report of Injury or Illness” it was alleged that carbon monoxide fumes were “putting [the claimant] . . . to sleep.” The assistant director of transportation for the self-insured testified that carbon monoxide detectors were purchased and installed in the bus but the monitors did not detect any carbon monoxide. In evidence were maintenance records which stated the battery on the bus that the claimant drove for the self-insured caught on fire on October 24, 2007, and that burnt wires were replaced on October 27, 2007. Further, maintenance records showed that the bus the claimant drove had to be jump started on October 3, 2007, and that the radiator was leaking coolant on November 9, 2007. Medical records dated November 9, 2007, state a diagnosis of “Toxic Effect of Unspecified Gas, Fume, Vapor” but an examination of the claimant’s lungs revealed no wheezes, rales or rhonchi. It was noted that the claimant had good tidal volume, no difficulty breathing, and that the claimant did not appear short of breath in any way. The note on the “history of the present illness” stated the claimant had not driven the bus in over 4 or 5 days and had been having no real symptoms, but she was complaining of a cough, a cold, or a sore throat. The claimant’s treating doctor certified that the claimant reached clinical maximum medical improvement on November 9, 2007, with no permanent impairment, and in the attached narrative report noted a diagnosis of “Toxic Effect of Unspecified Gas, Fume, Vapor” but did not identify a specific injury. Also in evidence is a medical record dated November 12, 2007, which gave an assessment of exposure to fumes and bronchitis. The same assessment was given in an additional

record dated November 19, 2007. Neither record contained an explanation of how the fumes may have caused the bronchitis. The hearing officer stated in the Background Information portion of the decision that the evidence establishes that the claimant sustained bronchitis from exposure to exhaust fumes. The hearing officer specifically found that the claimant sustained an inhalation injury in the course and scope of her employment as a school bus driver.

Exposure to toxic chemicals through inhalation, and the resultant effect on the body are matters beyond common experience, and medical evidence should be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. Appeals Panel Decision (APD) 020957, decided June 5, 2002, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). The fact that the proof of causation may be difficult does not relieve the claimant of the burden of proof. APD 93665, decided September 15, 1993. There were medical records that gave a history of claimant's exposure to "toxic fumes, vapor, or gas" but no specific chemical or substance was identified. The medical records in evidence do contain a diagnosis of bronchitis, however, no explanation was given as to how any exposure to or inhalation of a substance the claimant may have encountered on the bus caused her bronchitis. The hearing officer's decision that the claimant sustained a compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. There is insufficient evidence to relate any injury the claimant may have to exposure to exhaust fumes. Accordingly, the hearing officer's determination that the claimant sustained a compensable injury is reversed and a new decision rendered that the claimant did not sustain a compensable injury.

DATE OF INJURY, TIMELY NOTICE, AND DISABILITY

The hearing officer's decision that the claimant's date of injury is _____, is supported by sufficient evidence and is affirmed. The hearing officer's decision that the self-insured is not relieved from liability under Section 409.002 because the claimant timely notified her employer of a work-related injury pursuant to Section 409.001 is supported by sufficient evidence and is affirmed. The hearing officer's decision that the claimant did not have disability beginning November 1, 2007, and continuing through the date of the CCH is supported by sufficient evidence and is affirmed. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

SUMMARY

The hearing officer's determination that the claimant sustained a compensable injury is reversed and a new decision rendered that the claimant did not sustain a compensable injury. The hearing officer's determinations on the issues of date of injury, timely notice, and disability are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Veronica L. Ruberto
Appeals Judge