

APPEAL NO. 090222
FILED APRIL 27, 2009

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 January 29, 2009. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) sustained a compensable injury on _____. The appellant (self-insured) appealed, arguing that the evidence was insufficient to support a finding that the claimant sustained a compensable injury. The self-insured also contends that one of the claimant's exhibits was erroneously admitted into evidence because it was not timely exchanged. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

EVIDENTIARY RULING

The claimant offered correspondence from her employer dated September 30, 2008. The self-insured objected to its admission into evidence on the basis that the correspondence was not timely exchanged. Conflicting representations were made regarding whether or not the document had been exchanged at the benefit review conference. To obtain reversal of a decision based upon error in the admission or exclusion of evidence, it must be shown that the evidentiary ruling was in fact error, and that the error was reasonably calculated to cause, and probably did cause the rendition of an improper decision. Appeals Panel Decision (APD) 051705, decided September 1, 2005. We conclude that the self-insured has not shown that the hearing officer abused his discretion in admitting the evidence over the self-insured's objection that it was not timely exchanged nor has the self-insured shown that the error, if any, amounted to reversible error.

COMPENSABLE INJURY

The claimant testified that she worked for the employer as an administrative associate. She alleged that she sustained a compensable injury as a result of being exposed to jet exhaust fumes that were a result of jet engine testing performed by a company located close to her workplace. In evidence were emergency room records dated September 14, 2006, which noted her chief complaints were itchy eyes and upper respiratory congestion. The notes further indicated that the claimant's congestion started in July 2005. Additionally, the medical records indicated that the claimant had a cough and sore throat for the last two to three days but also noted that she had similar symptoms previously over the last four months. A clinical impression of acute bronchitis and right corneal abrasion were given. A medical record dated September 21, 2006, gave a diagnosis of allergic rhinitis. Also, in evidence was a memorandum dated September 15, 2006, from the director of environmental health and safety of the

claimant's employer. The director stated that the testing of the jet engines is sporadic and reportedly lasts for only 15 minutes but noted some of the fumes may get inside the building and once there may take time to completely dissipate. The director further stated that there were jet engine tests on the day before and the day of the alleged injury. Also, in evidence was correspondence from a professor in the self-insured's physiology department who alleged that strong fumes were in the building on several occasions and several people, including himself, were sickened by the fumes. None of the medical records, correspondence, or other evidence contained an explanation of how the fumes may have caused the bronchitis or any other injury to the claimant.

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 causal connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. 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 was some evidence of a history of the claimant's exposure to "jet fumes." However, the only evidence provided as to the type of chemicals came from the director of environmental health and safety who stated, "[t]he fumes should primarily be the combustion products (CO, CO₂, SO_x, NO_x) of the jet engine fuel." Although medical records in evidence contain diagnoses of bronchitis and of right corneal abrasion, no explanation was given as to how any exposure to or inhalation of a substance the claimant may have encountered in the course and scope of her employment caused her bronchitis or right corneal abrasion or any other damage or harm to the physical structure of her body. 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 possible injury of the claimant to an exposure to jet engine fumes. Accordingly, the hearing officer's determination that the claimant sustained a compensable injury on _____, is reversed and a new decision rendered that the claimant did not sustain a compensable injury on _____.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge