

APPEAL NO. 100308
FILED MAY 17, 2010

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 February 16, 2010. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____.

The appellant (carrier) appealed, disputing the hearing officer's determination of a compensable injury in the form of an occupational disease. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The claimant testified that he worked as a security guard for the employer. He alleged that he sustained a compensable injury on _____, as a result of inhaling chemical fumes, including naphthalene, that were released at a nearby refinery. The claimant testified that his eyes were burning and his chest was hurting and complained of severe chest discomfort and difficulty breathing. The claimant sought medical care from two different facilities on June 19, 2009. The claimant was diagnosed at one of the health care facilities with unspecified chest pain and chemical pneumonitis. The emergency room record dated June 19, 2009, noted that the claimant's lab work and chest x-ray were normal. Also in evidence was a medical record dated June 25, 2009, which reflects the claimant was given discharge instructions for shortness of breath and an inhalation injury. In evidence was a news report which documented the release of chemicals at a refinery near where the claimant was working on the date of his alleged injury.

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. Appeals Panel Decision (APD) 020957, decided June 5, 2002, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). See *also* APD 090222, decided April 27, 2009. 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 the claimant's exposure to chemicals released from the nearby refinery.

However, the hearing officer's decision that the claimant sustained a compensable injury in the form of an occupational disease is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The medical records in evidence do not contain an explanation of how any exposure to or inhalation

of a substance the claimant may have encountered in the course and scope of his employment on _____, caused damage or harm to the physical structure of his body. There is insufficient evidence to relate any possible injury of the claimant to an exposure to chemicals released from the nearby refinery. Accordingly, the hearing officer's determination that the claimant sustained a compensable injury in the form of an occupational disease on _____, is reversed and a new decision rendered that the claimant did not sustain a compensable injury in the form of an occupational disease on _____.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge