APPEAL NO. 110404
FILED MAY 31, 2011

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 23, 2011. Regarding the sole issue before her, the hearing officer determined that respondent 1 (claimant) sustained a compensable injury on _____. The appellant (self-insured) appeals the hearing officer's determination. The claimant responds, urging affirmance. The appeal file does not contain a response from respondent 2 (subclaimant).

DECISION

Reversed and rendered.

The claimant testified that on _____, he was working inside a dump truck in the employer's garage. He further testified _____, was very cold, and due to the cold temperature space heaters had been placed around the garage and next to the truck on which he was working. The claimant also testified these space heaters were fueled by kerosene, and once the fuel ran out they smoked profusely. The claimant testified that as he was working on the truck he became very dizzy and had difficulty standing up. He then noticed the heater was off and saw smoke. The claimant further testified he went outside for air and once outside he vomited.

The Employer's First Report of Injury or Illness (DWC-1) lists the nature of the injury as carbon monoxide poisoning. The employer's senior risk and safety specialist in the risk management department testified the entire garage in which the claimant worked has carbon monoxide detectors set far below the level where carbon monoxide fumes would affect an individual. He also testified the garage doors have carbon monoxide sensors that automatically open the doors if carbon monoxide fumes are detected, and that an investigation revealed the sensors were working properly on the date of the claimant's incident. He further testified there were other employees present at the time of the incident and none made any complaints regarding fumes.

The claimant testified he saw his treating physician on _____, who told the claimant to go to the emergency room that same day. The claimant did so and reported his complaints as nausea, vomiting, and dizziness. Emergency room records dated _____, list a clinical impression of "acute [carbon monoxide] poisoning; mild; resolved." A blood test taken at the emergency room that day shows the claimant's carbon monoxide level was normal.

The claimant testified he went to (Healthcare Provider) on January 13, 2010, because he was still feeling unwell. Medical records from (Healthcare Provider) dated January 13, 2010, list a diagnosis of "accidental poisoning by other specified gases and

vapor[s]," and list an assessment of "exposure to noxious fumes." A note dated January 13, 2010, from _____, a physician assistant, states:

> In my professional opinion, with a reasonable degree of medical probability, I conclude that the aforementioned diagnosis(es) is/are causally and proximally related to the work-related injury. The mechanism of injury and the description of the incident are consistent. It is more likely than not that the diagnosis(es) are the result of the work-related injury.

A report by (Dr. B) dated August 12, 2010, states the medical documentation does not support carbon monoxide poisoning, and that the work site had carbon monoxide sensors and door activation which did not show any level of carbon monoxide. Dr. B further states:

> [t]he symptoms of which the claimant complained could be due to exposure to some sort of fumes at work. His underlying asthma and allergies would make him more likely to be symptomatic from such exposures; although he does not present with the respiratory symptoms that you would expect from such exposure. Other chemical smells can cause the claimant's symptoms and would clear once removed from the work place. Finally, the claimant reports he was the only one affected by this exposure and that the others at work "have it out for him." It is not reported if anyone else smelled anything. There could also easily be an emotional component to these symptoms. The current diagnoses are probably related to the work site exposure. There is the possibility they are due to an exacerbation of the underlying asthma.

There were no medical records that contained an explanation of how fumes may have caused the claimant's complaints.

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. *See* Appeals Panel Decision (APD) 080787, decided August 12, 2008. 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, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199, 205 (Tex. 1980), and Parker v. Mutual Liability Insurance Company, 440 S.W.2d 43, 46 (Tex. 1969). In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. *See* Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Although there were medical records that gave a history of the claimant's exposure to carbon monoxide and "other specified gases and vapors," the claimant's blood test taken on the date of the incident revealed no abnormal levels of carbon monoxide in his blood. Further, while some of the medical records state the claimant's symptoms and/or diagnoses are "causally and proximally related to the work-related injury" and "probably related to the work site exposure," none of the medical records in evidence contain an explanation as to how any exposure to or inhalation of carbon monoxide or other substance the claimant may have encountered at work caused his symptoms. Without an explanation of causation these records are merely conclusory in nature. The hearing officer's decision that the claimant sustained a compensable injury on _____, 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 carbon monoxide or any other fumes. Accordingly, we reverse the hearing officer's determination that the claimant sustained a compensable injury on _____, and render a new decision 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

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

_____
Carisa Space-Beam
Appeals Judge

CONCUR:

_____
Cynthia A. Brown
Appeals Judge

_____
Margaret L. Turner
Appeals Judge