APPEAL NO. 91004
FILED AUGUST 14, 1991

On June 17, 1991, a contested case hearing was held at _____, Texas, (hearing officer) presiding as hearing officer. The hearing officer determined that the appellant's (claimant) ". . . hemoptysis or the alleged emphysema did not occur within the course and scope of . . ." her employment. He decided that the is not entitled to benefits under the Texas Workers' Compensation Act. The claimant requests review of the denial of compensation and complains of being "laid off" without being allowed to see a company doctor.

DECISION

Finding the evidence of record lacking to grant the relief requested, the decision and order of the hearing officer are affirmed. We further find no authority for this body to entertain or decide the matter involving the claimant's employment being terminated.

The claimant was employed by a motel in City A from on or about February 20, 1991 until on or about March 25, 1991. Her duties were generally of a housekeeping nature involving cleaning bedrooms and bathrooms, changing bed linens and carrying supplies to perform those duties. She would clean 20 to 27 rooms per day; although she considered this to be excessive as the industry norm, according to her account, was about 18.

On (date), while at work, she became ill on the job and spit up blood. She reported this to her boss, but continued working until 4:30 to 5:00 p.m. She called in sick the next day, which was a Sunday, but reported to work on Monday, (date), as she felt able to do her job. She told her boss that she was still coughing up blood and needed to see a doctor. Her boss told her if she was spitting up blood she did not need to be working for the motel. She was not allowed to work that Monday; nevertheless, returned on Tuesday when she was again not allowed to work. She told her boss that she needed to see a company doctor but was refused. She went to her family physician on Wednesday, March 27th, and was told she had hemoptysis. A definition provided by the claimant describes hemoptysis as spitting of blood coughed up from the lungs, bronchial tubes, windpipe or larynx potentially caused by a number of conditions such as tuberculosis, lung cancer or abscess, pneumonia, breakdown of a bronchial tube, heart failure, ruptured aortic aneurysm and others. Her doctor told her she needed a chest x-ray. She told her boss what her doctor had said but her boss decided not to authorize a chest x-ray. The claimant then went to her own doctor, had an x-ray, and was advised she had emphysema. She was told she could return to work, work normally and lead a normal life. A note from claimant's doctor (Carrier's Exhibit A) dated March 27, 1991 provided that the claimant was able to return to work on (date). She was not permitted to return to work at the motel.

In her "notice of injury or occupational disease and claim for compensation"

(Claimant's Exhibit 11) dated April 9, 1991, the claimant states her injury or occupational disease as "hemoptysis" or "internal bleeding," that it happened by pulling out a bed, and that her lungs were affected. She also indicated that she first knew the disease was work related on (date).

Concerning what we perceive to be the claimant's assertion that she was wrongfully discharged because of her attempt to invoke the workers' compensation laws by obtaining treatment by an employer's doctor, we find no authority for this body to determine the merits of this issue. The compensation laws clearly prohibit the discharge or other manner of discrimination against an employee ". . . because the employee has in good faith filed a claim, hired a lawyer to represent him in a claim, instituted, or caused to be instituted, in good faith, any proceeding under the Texas Workmen's Compensation Act . . ." Tex. Rev. Civ. Stat. Ann., art. 8307(c) (Vernon Supp. 1991). And, while there may be evidence to raise an issue that the claimant came under the protection of article 8307(c), Hunt v. Van Der Horst Corp., 711 S.W.2d 77 (Tex. App.-Dallas 1985, no writ), that would be a distinct or separate cause of action over which we have no jurisdiction. Artco-Bell Corp. v. Liberty Mutual Insurance Co., 649 S.W.2d 722 (Tex. App.-Texarkana 1983, no writ).

As we perceive it, the crux of claimant's remaining issue is lack of compensation for her medical expenses relating to the injury or disease she believes happened within the scope and course of her employment at the motel.

The record indicates that she paid $35.00 for an office visit to her doctor on (date) and $77.50 for a chest x-ray on (date). There is no evidence of any other medical expenses for treatment or further examination. Claimant indicates she had repeatedly requested her employer to send her to "the company" doctor but was refused.

In her testimony, the claimant repeatedly asserted she was fully able to work normally and had told her boss this on several occasions. She also stated that her doctor, when he told her she had emphysema, said she could work normally and she "could do anything." After (date), when she called in sick, she repeatedly attempted to return to work but was not allowed to do so by her employer.

The hearing officer found that there "was no evidence to indicate that the coughing or spitting of blood, or hemoptysis or emphysema was caused or aggravated by the employment" of the claimant at the motel. He concluded that the hemoptysis or emphysema did not occur within the course and scope of the claimant's employment with the motel and that the injury or disease was not a compensable injury or disease.

The evidence in our view, convincingly supports the findings and conclusions of the hearing officer. The evidence did not establish the necessary causal connection

between the claimant's injury or disease and her employment at the motel. INA of Texas v. Adams, 793 S.W.2d 265 (Tex. App.-Beaumont 1990, no writ). The claimant claimed a degree of expertise having been a nurse's aid, and testified that she feels her emphysema was caused by physical exertion (presumably at the motel) and that emphysema comes from too much dust, chemicals used and smoke. At another point in her testimony she states that hemoptysis "doesn't just pop up over night." This evidence was not determined to be sufficient by the hearing officer to establish the necessary causal relationship. We agree with this evaluation. Hernandez v. Texas Employers Insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ).

The term occupational disease "does not include an ordinary disease of life to which the general public is exposed outside of employment . . ." Tex. Rev. Civ. Stat. Ann., art. 8308-1.03(36). Probative evidence of a causal connection between the employment and a claimant's disease necessary to establish an occupational disease can be provided in several ways. Causation can be found where: (1) general experience or common sense dictate that reasonable men know, or can anticipate, that an event is generally followed by another event; (2) there is a scientific generalization, a sharp categorical law which theorizes that a result is always directly traceable back to a cause; or (3) probabilities of causation articulated by scientific experts are sufficient and more than mere coincidence. Parker v. Employers Mutual Liability Insurance Co. of Wisconsin, 440 S.W.2d 43 (Tex. 1969), Adams, supra, Hernandez, supra.

In this case, none of these methods of establishing causation is supported by probative evidence. Further, we have been unable to find any case or other Texas legal authority where basic housekeeping or room cleaning employment and emphysema or hemoptysis have been held to be causally connected under either an occupational disease or aggravation of a preexisting condition theory. Where there is no distinctive feature to a claimant's employment which caused the injury or disease, there is no basis for recovery for an occupational disease. It is no more than an ordinary disease of life. Home Insurance Co. v. Davis, 642 S.W.2d 268, Tex. App.-Texarkana 1982, no writ) (chronic bronchitis claimed as a result of several years exposure to extreme hot and cold temperatures in a packing plant), Bewley v. Texas Employers Insurance Association, 568 S.W.2d 208 (Tex. App.-Waco 1978, ref'd n.r.e.) (cold, sore throat and pneumonia occasioned from exposure to water and inclement weather, in course of employment). Under the circumstances, there is no basis to disturb the results of the contested case hearing.

The decision of the hearing officer is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Robert W. Potts
Appeals Judge