APPEAL NO. 950228

Following a contested case hearing held in (city), Texas, on January 20, 1995, the hearing officer, (hearing officer), resolved the two disputed issues by concluding that the appellant (claimant) did not sustain an occupational disease while employed by (employer) and thus did not have disability as defined in the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.011(16) (1989 Act). Claimant's appeal essentially challenges the sufficiency of the evidence to support the dispositive findings while the respondent (carrier) posits to the contrary and seeks affirmance.

DECISION

Affirmed.

Claimant testified that he was 59 years of age, that, except for a short period of time, he worked at the employer's sawmill for approximately 30 years, the last 15 of which were in the stud planing section, that throughout his employment but more so in the planing section he was exposed daily to sawdust and to other dust he described as black, that he smoked from his teen years for about 20 years, quit for about 12 years, and then resumed smoking, that he worked there until July 1994 when he had to stop working because of weakness and difficulty breathing, and that he has seen (Dr. S), a family practitioner, and (Dr. E). Claimant's wife's testimony was largely corroborative of the claimant's testimony about his work and the dust exposure. Employer's industrial hygienist, (Mr. B), testified about the ventilation and daily sawdust cleaning in the area where claimant had worked and said that sawdust created by wood cutting is not "respirable" dust because the particles are too large to deeply penetrate the lungs. He further testified that since 1989 he had collected air samples from the areas where claimant worked and that such air quality testing showed the samples to meet air quality standards (permissible exposure limits) three times more stringent than required by OSHA.

Claimant introduced various medical records and we note that Claimant's Exhibit No. 7 consisted of numerous copies of the same records. The Appeals Panel has observed that the introduction and admission of exhibits in this fashion detracts from the dispute resolution process. The medical records reveal that on May 12, 1994, the date of claimant's first visit, Dr. S described him as a heavy smoker for over 40 years and diagnosed advanced and severe chronic obstructive pulmonary disease (COPD); that the May 12th imaging report described "[a] typical smoker's barrel shaped, bronchitic, emphysematous type chest . . . ;" that on June 20th Dr. S indicated that claimant had discontinued smoking and was improving; that on August 1st claimant said he was unable to work and brought with him a packet of black dust stating that he was exposed to it daily, that he did not use a mask, and that he wanted to retire on a disability; and that on August 15th Dr. S stated that claimant "developed COPD from the combination of the dust and the heavy smoking." Dr. S also signed an undated statement that after examining claimant's work history "with particular attention to the years of exposure to airborne particles and their density, it is my opinion that

[claimant] has developed COPD from his work-related exposure to heavy dust concentrations and heavy smoking."

An undated statement signed by Dr. E stated the opinion, based on reasonable medical probability, that claimant "developed COPD from his work related exposure to heavy dust concentrations and it is my opinion that his work related exposure is a producing and proximate cause of his COPD." The statements of both Dr. S and Dr. E further stated that claimant's "disease process is so extensive that he can not engage in gainful employment and he is totally disabled."

The carrier introduced the report of (Dr. C), a medical toxicologist, who examined claimant on September 16, 1994, and who reported claimant's denial of involvement in plywood manufacturing or processing and, therefore, "no potential exposure to adhesives and solvents involved in those operations." Dr. C diagnosed COPD secondary to tobacco abuse and stated he had reviewed industrial hygiene samples in employer's plant which in no location showed dust concentrations "even approaching threshold limit values or time weighted averages." Dr. C stated that he found "no evidence of work-related disability" and that claimant was "severely limited in his endurance and tolerance for exercise but, in reasonable medical probability, his employment has not contributed significantly to this disability."

The previously mentioned conclusions of the hearing officer rested on her findings that claimant's employment did not cause or contribute to his COPD and that while he has since August 1, 1994, been unable to obtain and retain employment at wages equivalent to his wages on that date, such inability was not due to an injury for which workers' compensation benefits are payable. Claimant had the burden to prove he sustained a compensable occupational disease injury and that he had disability. The finding of a compensable injury is a threshold requirement for establishing disability under the 1989 Act. *See* Section 401.011(16) and Texas Workers' Compensation Commission Appeal No. 92217, decided July 13, 1992. The two disputed issues presented the hearing officer with questions of fact to resolve; and it was for the hearing officer, as the finder of fact, to resolve the conflicts and inconsistencies in the evidence, including the medical evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The crucial issue in this case was whether or not claimant's work was the cause of his COPD and the hearing officer's discussion makes clear that she found the opinion of Dr. C the more probative on the causation element of the compensable injury issue. It is the hearing officer who is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As an appellate body, we will not disturb the hearing officer's findings unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. We do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge