

APPEAL NO. 950236

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 13, 1994, a contested case hearing (CCH) was held in (city), Texas, (hearing officer) presiding. The issues as restated by the hearing officer and agreed upon by the parties were:

1. Whether Claimant gave timely notice of her illness to Employer and, if not, does good cause exist for failure to provide timely notice;
2. Whether Claimant timely filed notice of her illness to the commission [Texas Workers' Compensation Commission] and, if not, does good cause exist for failure to timely filing [sic];
3. Whether Claimant sustained a compensable injury, in the form of an occupational disease;
4. What is Claimant's period of disability; and
5. What is the Claimant's correct date of injury?

The hearing officer determined that claimant's kidney condition or renal tubular acidosis (RTA) was not the result of any injury or occupational exposure, that claimant had not sustained a compensable injury, that claimant had timely reported her illness to her employer, that claimant had timely filed notice of her illness with the Commission and that since there was no compensable injury there can be no resultant disability. The hearing officer inferentially determined the date of injury to be (date of injury), which was the date that the claimant first knew or should have known that her alleged occupational disease was related to her employment.

Appellant, claimant, disputed certain of the hearing officer's determinations, and reiterated her contention that "hot working conditions" were causally linked to development of her kidney stones and had aggravated her RTA. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent, carrier, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

It is undisputed that claimant worked as a machine operator for the employer and that part of her duties involved working with, maintaining and cleaning very hot "thermal former ovens." The testimony and medical records indicate that claimant has had a potassium deficiency and has seen a urologist since 1986, two years before she came to work for the employer in 1988. Claimant testified that on June 16, 1991, she suffered

symptoms of weakness and dizziness at work. Claimant testified that she finished her shift, went home and later that evening went to the hospital emergency room (ER) where she was told that she "was dehydrated" from being too hot. Claimant apparently continued to work until early December 1992 when she left work because she was pregnant and was suffering from undefined pain. In February 1993, claimant was diagnosed as having kidney stones. Claimant delivered her baby in August 1993 and in (month year) claimant had a procedure "where they go in and they blast those stones out of you." (That procedure was identified as an "extracorporeal shock wave lithotripsy.") Claimant testified that on (date of injury), she first became aware that her kidney stones and RTA condition were work related and caused by the hot working environment. Claimant said she notified her supervisor of her claim the same day, (date of injury). Claimant testified that she has not worked since about December 2, 1992.

A handwritten Notice of Injury and Claim for Compensation (TWCC-41), dated April 25, 1994, signed by claimant, lists a date of injury as "6-19-91," date lost time began "2-12-93," the accident was described as "work in heat" and that the body part affected was "All over." Claimant testified that she completed this form after or while speaking with someone at the Commission on the telephone. A subsequent "amended" TWCC-41, dated October 18, 1994, was filed, apparently with the assistance of claimant's attorney, with a date of injury "[date of injury]," date lost time began "2-12-93," description of accident "[t]he heat from work environment caused me to form kidney stones." Claimant's position throughout has been that although she did have a pre-existing condition of kidney disease, it was the hot working conditions that caused her to sweat which, in turn, depleted her urine output and increased the likelihood of kidney stones and RTA. Claimant concedes that RTA is an ordinary disease of life, but contends that the medical evidence establishes a causal link between the development of kidney stones and aggravation of her existing RTA.

The medical evidence includes reports from various doctors. (Dr. R), in a consultation report dated February 9, 1994, concludes claimant "has a distal renal tubular acidosis (Type I) with spontaneous hypokalemia and metabolic acidosis. . . ." Dr. R lists claimant's complaints as "fatigue, inability to work, leg cramps and a feeling of malaise." Dr. R does not believe claimant's "renal stone disease and/or [RTA] is sufficient explanation . . . [for claimant's] generalized complaints." Claimant states that (Dr. D), her treating doctor, referred her to (Dr. P). Dr. P, in a report dated April 7, 1994, recites a family history of renal problems, concludes claimant "has distal [RTA]." Dr. P commented that claimant "seemed more interested in knowing whether pregnancy had caused it [the RTA] and whether her current job environment might exaggerate it." Dr. P concludes:

It is my opinion that she likely has an inherited condition of distal renal tubular acidosis and that she probably had it for some time. However, excessive sweating as in her current job situation might make the situation worse by reducing urinary output. Even if her metabolic defect can be corrected by potassium citrate therapy, the optimal management of stone disease would require adequate urine output.

Dr. D, in a report dated May 31, 1994, gives a diagnosis of "1. Congenital distal [RTA]; 2. Bilateral nephrocalcinosis with calcium apatite stones; 3. Hypokalemia; 4. Mild transient renal insufficiency." Dr. D does not express an opinion as to causation or "disability" and suggested claimant see an industrial medicine physician for such an evaluation. Claimant was apparently seen by at least two other doctors whose reports are not in evidence, but who were referenced in a comprehensive six-page report dated June 20, 1994, from (Dr. W). Dr. W recited claimant's medical history back to 1986 and claimant's current treatment. Dr. W states:

The first stone she knew about was February 1993. She subsequently has had evaluation by [Dr. R] and by a world's expert in stone disease, [Dr. P]. Both of these doctors have concluded that she does have congenital distal renal tubular acidosis. [Dr. P], the [employer's] physician, [Dr. M], and myself feel that a hot environment would predispose her to volume depletion and would therefore potentially decrease urine output which could worsen her stone condition.

I discussed the case today with [Dr. GW], the nephrologist she most recently saw in Irving . . . and I, after discussion feel that this patient has congenital distal renal tubular acidosis that has been well evaluated by multiple physicians. She did not have stones prior to employment based on an x-ray done prior to this. It appears the stones started forming while employed and working in a very hot environment. She could have had an alteration of her urinary concentration (low urine volume) that precipitated stone formation which was perpetuated by her low urinary citrate from her distal renal tubular acidosis.

Unfortunately, a clear-cut cause and effect cannot be established, based on the data that I have available to me. However, after reviewing her whole chart and discussing this case with [Dr. GW], I must conclude that she had an exacerbation of her medical conditions by the work environment of a congenital predisposition to stone formation (RTA).

Subsequently, carrier apparently had claimant's records reviewed by (Dr. C) who, in a report dated October 13, 1994, stated:

It is my medical opinion that the nephrocalcinosis [claimant] developed was a natural outgrowth of her underlying renal acidosis and not related to her employment at [employer]. Summer temperatures in the plant where [claimant] works are higher than winter temperatures, but are no higher than ambient temperatures outside the plant.

Carrier also had claimant's medical records reviewed by (Dr. E) of Baylor University Medical Center. Dr. E, in a report dated December 7, 1994, also recited claimant's medical history and gave the following opinions:

First, pregnancy will increase the excretion of calcium and may predispose to the development of kidney stones in susceptible patients. . . . Thus, although her stone symptoms first occurred during pregnancy, these events may have been coincidental.

Second, patients who are born with or develop renal tubular acidosis often have a progressive disorder. The fact that prior x-rays did not show any stones or calcium and x-rays later did show stones is entirely consistent with the natural progression of this disease. There is no need to invoke external environment factors to explain why she developed progressive calcifications.

Third, there is little question that all patients with kidney stones, whether they are made up of calcium, uric acid, or any other mineral, should make every effort to maintain high urine volumes. A high urine volume dilutes the concentration of these solutes and decreases their propensity to form kidney stones. Consequently, we encourage patients susceptible to kidney stones to avoid volume depletion or dehydration. If they are forced to be in a hot or dry environment, such individuals must make every effort to increase their fluid intake. Most patients can maintain adequate hydration through increased awareness despite adverse environmental conditions. I have never had to suggest that a patient move from a hot climate to a cooler one to decrease the likelihood of developing stones. Common sense would dictate that individuals with stones should avoid extreme environments where they would chronically sweat profusely. . . . [I]f extremely hot and dry conditions existed I would encourage her strongly to drink liberal quantities of fluid on the job and to make an effort to transfer to a more hospitable environment, if at all possible.

It is undisputed that even the employer's physicians recommended claimant not work in an extremely hot environment. Carrier, however, analogizes this to an employee who has sustained a noncompensable sunburn and is told to refrain from working in bright sunlight.

The hearing officer determined that (date of injury), was the first date claimant knew or should have known that the occupational disease she claims was related to her employment. Pursuant to Section 408.007, (date of injury), became the date of injury. This determination has not been appealed and has become final.

Claimant contends that the medical "testimony" establishes a causal link between the hot working conditions and the development of kidney stones and the aggravation of claimant's RTA. Claimant cites Aetna Casualty and Surety Company v. Shreve, 551

S.W.2d 79 (Tex. Civ. App.-Houston [1st Dist] 1977, no writ) for the proposition that claimant should recover for the aggravation of a pre-existing occupational disease. We agree with that concept only to the extent that having a pre-existing occupational disease "does not prevent" an employee from recovering for an accidental injury which aggravated the pre-existing condition. *Id.* at 82. Whether there was aggravation of the pre-existing condition is a factual determination for the fact finder, which in a workers' compensation case is the hearing officer. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility to be given to the evidence.

As we have previously noted, where there is conflicting medical evidence, it is the hearing officer, as the fact finder and sole judge of the weight to be given to the evidence, who resolves conflicts and inconsistencies in that evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true where there is a conflict in expert medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not generally a fact finder and does not normally substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We find that the hearing officer's determinations that claimant's kidney condition or RTA was neither caused by nor aggravated by claimant's working conditions and that claimant's RTA was an ordinary disease of life to be supported by sufficient evidence, principally the reports of Dr. C and Dr. E. In that claimant did not have a compensable injury, claimant, by definition, is precluded from having disability. Section 401.011(16).

It is axiomatic that the claimant has the burden of proof to show that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Further, in a case such as this, expert medical evidence is required to establish a causal connection between claimant's pre-existing renal disease and any aggravation of that disease due to claimant's employment. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). In this case, claimant has presented expert medical evidence in the form of Dr. P's and Dr. W's reports, which give opinions establishing a causal connection. We further note, with approval, that those reports give more than a conclusory opinion regarding the causal relationship. On the other hand, there is conflicting medical evidence from Dr. C and Dr. E to the effect that any relationship between claimant's developing kidney stones and RTA with the employment was "coincidental" and that claimant's condition would have progressed without "external environmental factors." Again, the carrier's medical evidence explains why that opinion is so and does not merely rely on conclusory statements.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and consequently the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Susan M. Kelley
Appeals Judge