APPEAL NO. 950382

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in (city), Texas, on February 3, 1995, with (hearing officer) presiding as hearing officer. The issues before the hearing officer were: (1) did the appellant (claimant) sustain a compensable injury in the form of aplastic anemia caused by exposure to benzene on or about (date of injury); (2) did the claimant report an injury to the employer on or before the 30th day after the injury, and if not, does good cause exist for failing to report the injury timely; and (3) did the claimant have disability resulting from the injury, and if so, for what periods. The hearing officer determined: (1) that the claimant did not sustain a compensable injury in the form of aplastic anemia caused by exposure to benzene on or about (date of injury); (2) that the claimant did not notify the employer of a work-related injury not later than 30 days after the date of the injury or occupational disease and that the claimant did have good cause for failure to give notice to the employer not later than 30 days after he became ill; and (3) that the claimant does not have disability because he did not sustain a compensable injury. The claimant appealed urging that the determinations that the claimant did not sustain a compensable injury and that the claimant does not have disability are contrary to the great weight of the evidence. The respondent (carrier) replied urging that we affirm the decision of the hearing officer.

DECISION

We affirm.

The claimant, a young man who was born on April 26, 1969, testified that he worked for the employer for about three years. He said that for the first two years he serviced oil wells by pulling rods, cleaning them, and putting them back. He said that on about 20 days a month his clothing and his body got soaked with crude oil and paraffin. He said that he became a roustabout foreman and replaced oil lines and cleaned the inside of oil tanks. He testified that in that job he got coated with crude oil about 15 days a month, and that he had that job for about six months before he got sick. He said that he wore regular work clothes and that the employer laundered them for him. He said that he got sick in (City 1), Texas, had temperature of about 105°, and returned to (City 2), Texas, his home town. He testified that he went to the hospital emergency room and the doctor told him that he thought he had the flu. He said that he returned to the emergency room and was told that he had mono. He said that he was hospitalized, was treated with IVs, and got worse. He said that his wife took him out of that hospital and took him to the emergency room of another hospital. He said that he was treated by (Dr. H) and started bleeding everywhere. He said that two or three days later (Dr. D) diagnosed aplastic anemia. He said that he received radiation and chemotherapy treatments and had a bone marrow transplant with his sister being the donor. He said that he was in the hospital for about nine months, is still being treated, has not been released to return to work, and is not able to work. He said that he was never diagnosed as having hepatitis. He said that (MSDS) were obtained for the employer, but that the doctor said not to worry about how he got the aplastic anemia at that time, but to worry about

getting him well. On cross-examination he said that he had flu symptoms, that he worked as long as he could, and that the doctors thought that he may have hepatitis but ruled it out. He said that in the past he worked with pesticides and herbicides for a while and that he has used carburetor cleaner but always used rubber gloves when he used carburetor cleaner.

The claimant's wife testified that the claimant got sick in City 1 on (date), and that about 15 minutes after Dr. E suggested that her husband's illness might be job related she called the employer to obtain the MSDS because the information on what he had been exposed to was needed to treat him. She said that this was in March or April 1993 and that she called because her husband was in ICU and could not call. She testified that the claimant came home from work with oil on him and that he always used rubber gloves when cleaning carburetors. She said that after he got sick and took medication his memory has not been good and that he is unable to work. On cross-examination she testified that her husband took his clothes to work to be laundered and that the health insurance company has paid medical benefits.

The claimant introduced one exhibit, a letter from Dr. E, a specialist in hematology and medical oncology. Dr. E wrote:

> [Claimant] is an unfortunate man who was diagnosed with severe aplastic anemia in March, 1993. He underwent allogenic bone marrow transplantation from his sister on May 6, 1993. He developed the usual post transplant complications including acute and chronic grafts vs. host disease. It is my understanding that [claimant] had been exposed to Benzene during his work prior to March, 1993. It is well documented in the medical literature that Benzene has a casual [sic] relationship to the development of severe aplastic anemia, therefore this is considered work related.

The carrier introduced nine exhibits and emphasized a three and one-half page letter from (Dr. C), a toxicologist, dated August 21, 1994, and three articles on aplastic anemia that Dr. C attached to his letter. Dr. C wrote that he was provided the medical records from four hospitals where the claimant was treated, office records of attending physicians, and a recorded interview of the claimant dated January 18, 1994. Dr. C summarized the claimant's medical condition and the treatments he received. After noting that the question of benzene exposure in the course of the claimant's employment was raised, Dr. C wrote:

> Based on the understanding that crude oil contains some benzene and the understanding that benzene does cause aplastic anemia, [Dr. E] has opined benzene is the cause of the patient's aplastic anemia. This mechanism is untenable because the concentration of benzene present in crude oil is not sufficient to yield concentrations in ambient air of the order of magnitude necessary to induce aplastic anemia as the result of benzene toxicity. Although many cases of aplastic anemia caused by benzene toxicity have been reported in the older literature, the exposure to benzene had generally

exceeded 100 parts per million (ppm) and, in many cases, very much higher, and the latency between exposure and development of aplastic anemia is expected to be a matter of years.

* * * *

In reasonable medical probability, the aplastic anemia manifest by this patient is unassociated with the workplace or benzene exposure.

* * * *

The association between aplastic anemia and viral hepatitis is a strong one, while the association between aplastic anemia and benzene of the order of magnitude potentially sustained by this patient is either very weak or non-existent.

In reasonable medical probability, this patient's illness is a sequela of viral hepatitis and is unrelated to the workplace.

The burden of proof is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. Where the subject of an injury is not so scientific or technical in nature as to require expert evidence, lay testimony and circumstantial evidence may suffice to establish causation. However, in cases such as the one before us, where the matter of causation is not an area of common experience, expert evidence may be essential to satisfactorily establish the link or causation between the injury and employment. Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App-Houston[14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on whether the claimant's illness was caused by his employment, the hearing officer must look to all relevant evidence to make a factual determination and the Appeals Panel must consider all of the relevant evidence to determine whether a factual finding of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. At the hearing and on appeal, the claimant argued that Dr. C only considered inhalation of benzene vapor by the claimant and did not consider the claimant's

daily exposure to and skin contact with crude oil. There is no showing that the hearing officer did not consider this argument when he determined that the claimant did not meet his burden of proof and found in Finding of Fact No. 11 that the "[c]laimant's aplastic anemia condition was not caused by his exposure to benzene or any other chemical at work." An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable injury in the form of aplastic anemia caused by the exposure to benzene, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. Since we find the evidence to be sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable injury and disability can be sustained only as the result of a compensable injury, we will not disturb the determination of the hearing officer that the claimant did not sustain disability.

The determinations of the hearing officer that the claimant did not timely notify the employer of his claimed injury and had good cause for not timely notifying the employer have not been appealed and have become final. Section 410.169. We note that Section 409.001 provides that if an injury is an occupational disease the employee shall notify the employer of the injury not later than the 30th day after the date the employee knew or should have known that the injury may be related to the employment. Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. In cases such as the one before us, where the evidence establishes that the date of a claimed injury or the date that starts the 30-day notice period is different from the date used in the issue or issues forwarded from the benefit review conference, the hearing officer should make appropriate changes.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge