

APPEAL NO. 950408

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 25 and February 23, 1995, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues unresolved involved a dispute over whether appellant (claimant), who is the claimant, sustained an inhalation injury on (date of injury), in the course and scope of her employment at the office of (JB), a dentist, (employer). The hearing officer determined that she had not sustained such a compensable injury, and therefore also had no disability from a compensable injury.

The claimant has appealed, arguing that "all of the facts" point to her asthma being caused by fumes at her job. The claimant argues that she is not required to prove an absolute linkage. The claimant argues that she has an injury and resultant disability. No response was filed.

DECISION

We affirm the hearing officer's decision.

Claimant worked for the employer part time five hours a day beginning at nine o'clock a.m. Claimant said that she sterilized the dentist's instruments and cleaned rooms. She had been so employed since May 1992. She contended she had been injured by fumes emanating from the machine used for sterilizing the instruments. Claimant said other people did the same sterilization job, and to her knowledge no one else ever became sick. Claimant said a special liquid was poured into the top of the oven-like machine that was used to sterilize the instruments. The machine gave off steam and vapors, which came from around the seal of the door. The process took around 20-30 minutes.

Claimant said she had occasionally felt ill before from the vapors, but on (date of injury), her last day of work, she became sick and went to the hospital, where she was diagnosed with asthma. She guessed that her coworker, (A), had put too much liquid into the machine.

Claimant stated that her doctor took a skin culture because she developed "spots" on her skin. She stated her doctor was unable to say if these were related to her breathing problem. While medical records in evidence after (date of injury), indicate some constrictive processes in her lungs, there is no evidence stating that asthma was caused by (as opposed to experienced at) her employment. Medical records indicated that the "special" liquid might contain ethanol or formaldehyde. However, claimant said she could not say for sure what was in the bottle of special liquid.

Claimant said that she would not be able to return to the same type of work. A letter dated October 12, 1994, by (Dr. C), noted that claimant should avoid exposure to formaldehyde, although he stated it was difficult to conclude whether exposure to

formaldehyde had caused her pathology to begin with. He stated that claimant had normal pulmonary capacity, and that her ability to perform a normal job, or lead a normal life, was in no way jeopardized.

A compensable injury includes occupational disease. However, Section 401.011(34), in the definition of occupational disease, expressly provides:

The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

We find the evidence wholly lacking to prove that claimant had a compensable injury arising from the course and scope of her employment. This case is substantially similar to another case in which asthma was contended to be a work-related injury, Hernandez v. Texas Employers' Insurance Association, 783 S.W.2d 250 (Tex. App.- Corpus Christi 1989, no writ). The appeals court noted that absent evidence of a causal link to the specific employment (versus employment generally), the disease would be considered an ordinary disease of life. The court, noting that expert medical testimony was required to prove causation of asthma because it was beyond common experience, found that causation could not merely be implied because symptoms arose at the job. The Supreme Court has stated that expert medical testimony must establish "reasonable probability" of a causal connection; in the absence of reasonable probability, the inference of a causal connection was not more than speculation or conjecture. Schaefer v. Texas Employers Insurance Association, 612 S.W.2d 199 (Tex. 1990). The Schaefer court further stated that the fact that proof of causation is difficult does not provide a plaintiff with an excuse to avoid introducing some evidence of causation.

The hearing officer's determination that claimant did not sustain a compensable injury is sufficiently supported by the evidence, which additionally points to the existence of an ordinary disease of life.

Temporary income benefits are due when an injured worker has not reached maximum medical improvement and has disability. Section 408.101(a). Section 401.011(16) defines disability as: ". . . the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." In this case, there was the letter of Dr. C indicating that claimant's contended injury did not impede her ability to find gainful employment in general, to be balanced against her statement that she could not work. However, we would note that the threshold requirement for disability that claimant sustained a compensable injury was not made and supports the hearing officer's determination on this point.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge