APPEAL NO. 960019

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §401.001 *et seq.* (1989 Act). On August 8, 1995, a contested case hearing (CCH) was held in [city], Texas, with [hearing officer] presiding as hearing officer. The appellant, herein claimant, [claimant], contended that she was injured on or about [date of injury], while employed as a pipefitter by [employer], employer. The issues considered at the CCH were the date of injury, whether various conditions cited by the claimant were the result of a claimed injury, whether the claimant gave timely notice of her alleged injury to a supervisor pursuant to Section 409.001, and whether claimant had disability as a result of the claimed compensable injury. Although the hearing decision indicated that an issue of whether claimant sustained a compensable injury was added because it was actually litigated, the defense that no injury occurred at all was the carrier's position, in the benefit review conference (BRC) report, on the issue in which the enumerated physical conditions were claimed by claimant to have occurred.

The hearing officer determined that the date of claimant's alleged injury was [date of injury]; that she gave timely notice to her supervisor on that date; and that she did not sustain a compensable injury and did not have disability. The hearing officer found that claimant was not able to identify the chemicals to which she may have been exposed, or that the symptoms she listed were the result of such claimed exposure.

The claimant has appealed, arguing that her doctor's opinion was ignored by the hearing officer. She argues the evidence she believes proved both her exposure injury and her resulting inability to work. Claimant complains that the hearing officer took several months to write the decision. The carrier responds that the decision is supported by the record and should be affirmed. An untimely supplemental appeal was filed by an attorney who indicates he was only recently contacted to assist the claimant; the filing also requests more time for an appeal. This has not been considered because it was not filed within 15 days of claimant's receipt of the hearing officer's decision, a deadline that cannot be extended by the Texas Workers' Compensation Commission. Section 410.202.

DECISION

Affirmed.

Claimant testified that she worked as a pipefitter, which entailed working projects, generally of limited duration, as called upon by the employer. On or about [date of injury], she was working at [chemical] plant for her employer, on a "turnaround" project. Claimant said that she and another coworker, [Mr. E], were involved in cleaning out and refitting pipes in two enclosed vessels where chemicals were mixed when the plant was in operation. Claimant said that she and Mr. E had been occupied for two weeks cleaning out two vessels. Claimant said she wore leather gloves, safety glasses, and a helmet but no special suit or respirator.

The duration of claimant's contended exposure was not clearly established. Claimant said that the vessel that made her sick was the second vessel. She stated that the first week of work took place within the first vessel. According to claimant, she and Mr. E thereafter entered the second vessel, where there was a strong smell. Claimant said that they removed some shelves to work down toward a pipe, and when Mr. E climbed down to that pipe, he screamed. According to claimant, there was a blob of crystallized chemicals in the pipe.

Either before or after the discovery of the "blob," claimant and Mr. E continued to work, and had to keep coming up to the opening of the vessel (which was about twelve feet in diameter) for air due to feeling unwell and dizzy. Claimant said that Mr. E told her she passed out and he had to carry her out, but then she stated she did not recall that she in fact passed out. When asked in cross-examination to specify how long she had worked in the vessel, where the crystallized mass was discovered, she answered only generally that she had worked in "the vessels" 12 hours a day, up to 7 days a week. Then she stated that she could not say for sure how long she and Mr. E had been working in the second vessel before the "blob" was discovered. Claimant did agree that she could not say for sure, because she was not a chemist, what chemicals she had been exposed to or what was present in the vessel, only that whatever had been in the vessel hurt her. She said that she immediately reported the incident to her supervisor, [Mr. P], and he angrily took her to the plant safety manager to file a report. Claimant said that workers were thereafter prohibited from working in that vessel.

Claimant said that symptoms of her injury, which persisted to the date of the CCH, were headaches, vomiting, memory loss, slurred speech, a "knot" on her neck, hair loss, ringing in the ears, and trouble sleeping. She said her condition had worsened. Claimant agreed that she was laid off in a routine reduction in force on April 14, 1993. Claimant said that she went to the [clinic] on or around May 28, 1993. Claimant returned to work for the employer at another job in mid-July until the first week in August 1993. She said that this particular job entailed serving as a helper, but that she was not able to perform everything she was asked to do, and had not worked at all since August 1993.

Evidence was developed that in September 1993, claimant went back to [clinic], where she had testing and was diagnosed with a thyroid condition. She said that she received radiation treatments. She also took medication which caused sores to develop on her face and in her mouth. She agreed that she was not expressly told not to work. Claimant said that she never received straight answers from [clinic] as to what was wrong with her, nor was she recontacted about any follow-up visits after she had been there about three times. Claimant agreed that she had refused to sign a release to the carrier for her medical records from [clinic]. She also indicated that she was still being treated by [clinic] and had still not received a straight answer.

According to claimant, she agreed at a March 9, 1994, BRC, when represented by an attorney, to see a doctor agreed upon by the parties. She saw [Dr. C], who referred her to [Dr. P], a psychologist. She said they examined her but did not treat her. Claimant

agreed she was referred to [Dr. CM] by another attorney who was representing her in a third party action, and that she has been treated by Dr. CM since December 1994. She said that Dr. CM took her off work in January 1995 and was still treating her for the effects of chemical exposure. According to claimant, her overriding problem at the time of the CCH was immune system impairment.

The project foreman in [the month and year of injury], [Mr. S], stated that no one had reported to him, nor was he aware of a report, that claimant had an inhalation or chemical exposure injury. Mr. P's statement similarly denied such a report. A statement from [Mr. R], the safety inspector for the company where employer was doing the work, said that the vessels had been checked beforehand and were cleared for work to proceed.

On June 23, 1994, Dr. P, the psychologist, wrote that claimant said she had been going to [clinic] for a long time. Dr. P administered various tests and found no memory or cognitive impairment. Sensory and gross and fine motor coordination were normal. Testing on the Minnesota Multiphasic Personality Inventory profile indicated a somataform disorder, in which claimant reacted to the stresses of life with a variety of physiological symptoms. He noted that she had been treated for hyperventilation on October 26, 1993, at an area hospital. Dr. P stated that the types of psychological problems he observed were not of the sort that would develop after a chemical exposure.

Dr. CM's letter report in May 1995 describes a history of chemical exposure as reported to him by claimant. These chemicals include styrene, benzene, ammonia, ethylene, theylene, welding fumes, dichlorobenzene, industrial alcohol, and coal dust. Asked about this list at the CCH, the claimant indicated that welding fumes exposure would have been a prior job, and that the other chemicals were substances she knew were in the chemical plant. Dr. CM lists some symptoms of chemicals to which claimant contended exposure. Several recitations of symptoms indicate that they are attributable to "high" or "chronic" exposure levels. Dr. CM stated that, based upon claimant's presenting complaints, he felt it medically probable that she was suffering from the effects of chemical exposure. In August 1995, Dr. CM wrote that claimant was not able to return to any employment pending a building up of a "ravaged" immune system. Various material data sheets describing possible side effects of various chemicals are in evidence.

The causation issue, in this case, presented the hearing officer with a question of fact to resolve and it is the hearing officer who is the sole judge of the materiality, relevance, weight and credibility of the evidence. Section 410.165(a). With no information confirming the types of chemicals and the duration of the contended exposure, and some evidence indicating that claimant was also treated for other conditions, such as thyroid problems or hyperventilation, we are satisfied that the evidence sufficiently supports the hearing officer's findings and conclusions. Only Dr. CM associated claimant's health problems with an exposure, the facts of which exposure were based upon what the claimant reported to be present in her workplace. The claimant had the burden to prove her injury. As we have before held, exposure to toxic chemicals through inhalation, and the resultant effects on the body, are generally matters beyond common experience and

must be proven through medical evidence rising to the level of reasonable medical probability, rather than possibility, speculation, or guess. Texas Workers' Compensation Commission Appeal No. 941030, decided September 15, 1994; also Texas Workers' Compensation Commission Appeal No. 94824, decided August 10, 1994. The fact that causation may be difficult to prove does not relieve a claimant from this burden of proof. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). As claimant was not found to have sustained a compensable injury, the hearing officer was correct in finding that there could be no resultant lack of ability to work because of any compensable injury. Further, the fact that the hearing officer found a date of alleged injury, and timely notice of an injury, do not compel agreement with the claimant that she was, in fact, injured in the course and scope of employment.

Applying the standard we use for appellate review, we do not find that the hearing officer's findings and conclusions are so against the great weight and preponderance of the evidence as to be manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge