APPEAL NO. 991591

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN.§ 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 10 and June 2, 1999. The issues were:

1. Did the Claimant [appellant] sustain an injury in the form of an occupational disease on _____?

2. Is the compensable injury a producing cause of low grade fever, sore throat, moderate chronic cough, shortness of breath and difficulty breathing, nausea, pain with urination, chronic fatigue, chronic bronchitis, chronic asthma, seizures, headaches, viral syndrome, bronchial spastic airways disease, difficulty concentrating, and chronic low back pain?

3. Does the Claimant have disability, and if so, for what period?

4. Did Reliance National Indemnity Company provide workers' compensation insurance coverage for [employer] on _____, the date of the injury?

5. Was the Carrier's contest of compensability based on newly discovered evidence that could not reasonably have been discovered at an earlier date, thus allowing the Carrier to re-open the issue of compensability pursuant to Texas Labor Code, Section 409.021?

With regard to those issues, the hearing officer determined that on _____ (all dates are 1998 unless otherwise noted), claimant had sustained a compensable occupational disease injury in the form of a "respiratory injury (bronchitis)" which was the producing cause "of a low grade fever, sore throat, shortness of breath and difficulty breathing," but that the compensable respiratory injury (bronchitis) is not a producing cause of the other conditions listed in Issue No. 2; that claimant does not have disability (as defined in Section 401.011(16)); that carrier (respondent) did provide workers' compensation for the employer; and that carrier's contest of compensability was not based on newly discovered evidence which would allow carrier to reopen the issue of compensability. The hearing officer's decisions for Issues No. 4 (coverage) and No. 5 (reopening on the issue of compensability), having not been appealed, have become final pursuant to Section 410.169 and will not be discussed further.

Claimant's appeal basically disputes sufficiency of the evidence on the extent of injury and disability and castigates the employer for unhealthy working conditions. Claimant asserts that the unhealthy working conditions did cause all his claimed ailments, that he has suffered disability, that his "epilepsy [was] brought on by the occupational disease," that carrier has not paid certain medical bills, and that the employer "should be

punished because big corporations should realize that they can't get away with that." Claimant requests that we reverse the hearing officer's decision and render a decision that he "has a permanent disability and should be compensated by the carrier who failed to provide a safe working environment." Carrier responds to most of the points raised by claimant and urges affirmance.

DECISION

Affirmed.

First, we will note that the payment of medical bills is not a proper issue in this forum and must be addressed by the Texas Workers' Compensation Commission Medical Review Division. Second, this forum is not a proper place to address the employer's alleged unsafe working environment. Third, the workers' compensation disputes resolution process is not designed to "punish" corporations but rather it is to determine whether benefits are due and to award benefits. *See* Section 410.168. Consequently, we interpret claimant's appeal as contending that his injuries are more extensive than found by the hearing officer and that he has disability which is defined as the inability because of a compensable injury to obtain and retain employment at the preinjury wage. Section 401.011(16).

Claimant was employed as a telemarketer by the employer, a subsidiary of a large funeral service corporation. It is undisputed that claimant worked in an old building which had been converted into an office of sorts containing cubicles for claimant and four other employees. Claimant testified that the building was dirty, dusty, rat-infested, and had a toxic smell. Claimant said that he developed flu-like symptoms after working in the building several months. Claimant said that he complained to his supervisor, who was also his wife and a claimant in another case, and that the Occupational Safety and Health Administration (OSHA) investigated the premises on two occasions. Claimant said that when the OSHA inspectors came, the employer cleaned the premises and there was temporary improvement. Eventually, the employer closed the building on _____ and claimant sought medical attention. Claimant was paid his regular wages through May 29th.

Claimant apparently first saw Dr. S on March 9th. In an Initial Medical Report (TWCC-61) of that date, Dr. S diagnosed "acute bronchitis" and released claimant to light duty on March 16th. In a more detailed report dated May 22nd, Dr. S diagnosed "allergic bronchitis due to constant exposure of mold spores, possible contamination and unknown contaminates in his work surroundings." Dr. S also stated claimant was "totally disabled" due to "acute dyspnea and chest congestion." Dr. S referred claimant to Dr. M, who, in a report dated May 12th, commented that claimant has enjoyed good health" until earlier in 1998; noted complaints of "shortness of breath, cough, wheezing, headaches, etc." which claimant attributed to his workplace; recited claimant's history; and concluded that the pulmonary function studies "demonstrate absolute no significant problem." Subsequently, Dr. S referred claimant to Dr. C, an infectious disease specialist, for evaluation. In a report dated June 3rd, Dr. C noted "possible exposure to environmental infectious agents including saprophytic fungi and gram negative rods" but that "whether or not this was

induced by his work or not is unclear. . . ." Dr. C ordered serology testing. In a follow-up report dated July 10th, Dr. C commented:

> Potential exposure to inhaled pathogens at work but with no serologic tests reflecting overt infection. I would note that the patient does have some persisting fever, has a positive test for adenovirus and I think there are several possibilities here. . . . I think it is less likely, and probably in fact not likely, that he has an active infection related to an inhaled pathogen from his work place.

In another follow-up report dated September 1st, Dr. C comments:

> Patient appears by history of [sic] have some degree of allergic rhinitis as well as some degree of asthma. At this point the patient is clinically stable and apparently he has had fairly extensive testing in the past by [Dr. M] as well as [Dr. S]. At this time his exam reveals no wheeze and the patient has normal oxygen saturation and appears comfortable and in no distress. . . . I do not think there is any way that his current symptoms can be conclusively related to any type of exposure at work. If the patient did have an exacerbation of allergies or asthma secondary to exposures at work, it was likely be that these would be very short lived and would not provide the ongoing symptoms of which he complains.

In a report dated January 4 A1998 [sic 1999]," Dr. S stated that in his opinion claimant had "Legionnaires' disease with chronic fatigue syndrome" caused by his work and that claimant's seizures "are complications related to the Legionnaires' disease and chronic fatigue syndrome." However, in a deposition by written questions in March 1999, Dr. S clarifies that his diagnosis of Legionnaires' disease and chronic fatigue syndrome was based on what he thought Dr. C had said and that he, Dr. S, Aonly gave [claimant] supportive and symptomatic care." Similarly, Dr. C, in a deposition by written questions, commented on causation as follows:

> It is my belief that [claimant's] current condition is not due to an occupational exposure. Although I have no proof, I believe the patient had pre-existing allergy airways disease, possibly transiently exacerbate by some type of exposure at work, but certainly back to his baseline pattern now. His additional symptoms are also compatible with other problems including depression.

Claimant relies on an assessment performed by Dr. N, an independent medical examination doctor for carrier, who, in a report dated December 14th, commented:

> [Claimant] has chronic respiratory symptoms which are consistent with either chronic bronchitis or chronic asthma. . . . Since [claimant] developed these

symptoms at work and these symptoms are consistent with airway sensitization to environmental organic antigens, I would suggest that he has a work-related injury or illness. I understand that it is unusual for all individuals in a particular environment to develop symptoms; however, this does not necessarily represent an allergic process and could represent direct injury from these environmental particulates.

The hearing officer thoroughly reviewed the extensive medical evidence and found:

FINDINGS OF FACT

15. Claimant sustained a mild respiratory injury to his lungs on _____ as a result of working in a poorly ventilated building and this respiratory problem was resolved no later than May 12, 1998 when Claimant was evaluated by [Dr. M].

16. Claimant does not have Legionnaires' Disease or any other infectious disease as a result [of] his work activities.

17. Although Claimant had a mild respiratory injury, that injury did not prohibit Claimant from performing his telemarketing duties.

Claimant, in his appeal, asserts both that Dr. C "did not have all evidence and saw claimant only on a few occasions" and that Dr. C himself diagnosed the claimed symptoms. Claimant also contends, on appeal, that he "did not have seizures until [he] was injured." The last statement is in direct conflict with claimant's testimony at the CCH where he testified that he had had viral meningitis at age five or eight which caused his epileptic seizures and that the doctors "couldn't predict how somebody would recuperate from such a traumatic thing as viral meningitis." We would note that most of the doctors recited that claimant had been in excellent health and that they may or may not have known about claimant's prior history of viral meningitis and seizures.

In any event, an employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. The necessary causal connection between the particular disease and the workplace must be established by expert medical evidence, to a reasonable medical probability. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, *citing* Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). Likewise, expert medical evidence, to a reasonable medical probability, is required to prove whether a compensable occupational disease extends to a particular condition. Texas Workers' Compensation Commission Appeal No. 961433, decided September 6, 1996. In that case, the employee had inhaled fumes at work and the carrier accepted liability for her chest and sinus conditions. The issue on appeal was whether the compensable inhalation injury extended to the claimant's multiple chemical sensitivity syndrome, tiredness, dizziness, headaches, and nausea. We held therein that the employee did not prove, by expert medical evidence, that the inhalation injury extended

to the disputed symptoms. The mere existence of the symptoms was not enough for the hearing officer to infer that the compensable injury extended to the conditions. Similarly, in this case, the medical evidence is, at best, conflicting regarding exactly what condition claimant has and whether that condition was caused by the occupational disease which the hearing officer found to have been limited to a mild respiratory injury which did not prevent claimant from obtaining and retaining employment at his preinjury wage and which had resolved by May 12th.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). As an appellate body, we will replace our judgment for that of the hearing officer and reverse the decision only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

We hold the hearing officer's determinations that the compensable respiratory injury was a producing cause of a low grade fever, sore throat, shortness of breath, and difficulty breathing but not other alleged symptoms to be supported by the evidence, principally Dr. C's reports. We also hold that the hearing officer's determinations on disability and claimant's mild respiratory injury did not prohibit claimant from performing telemarketing duties to not be so against the great weight and preponderance of the evidence as to be manifestly unjust or clearly wrong.

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 clearly wrong or 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:

_____
Susan M. Kelley
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge