APPEAL NO. 000651

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 2, 2000. She determined that: (1) respondent (claimant) sustained a compensable injury on or about _____; and (2) claimant had disability beginning on February 17, 1998, and continuing. Appellant (carrier) appeals these determinations on sufficiency grounds. Carrier also contends that the hearing officer erred in admitting several reports from doctors, asserting that the reports were unreliable and that there was nothing to show that the doctors were experts in the related medical area. Carrier further asserts that the hearing officer erred in admitting evidence regarding what benefit payments carrier had made to claimant. Claimant responds that the Appeals Panel should affirm the hearing officer=s decision and order.

DECISION

We affirm.

Carrier contends the hearing officer abused her discretion in admitting Claimant=s Exhibits Nos. 2, 4, 6, 8 and 10, which were medical reports from Dr. A; Dr. D; Dr. DI; Dr. JE; and Dr. M. Carrier asserts that: (1) there was nothing to show that the doctors were experts such that they could give evidence on causation; and (2) the reports were not shown to be based upon a reasonable degree of medical probability or certainty and were not shown to be scientifically reliable pursuant to the standards discussed in E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995) and Merrell Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997), cert. denied, 523 U.S. 1119 (1998).

The three cases cited by carrier are not workers' compensation cases, but are civil tort cases tried in conformity with the Texas Rules of Civil Evidence. The rules of evidence do not apply in cases before this commission. Section 410.165(b). Further, Section 410.165(a) of the 1989 Act provides that a hearing officer "*shall accept* all written reports signed by a health care provider. [Emphasis added.]@ Therefore, we perceive no error in the admission of the complained-of exhibits. The hearing officer may consider carrier=s assertions regarding the doctors= qualifications as experts, whether the reports were based upon a reasonable degree of medical probability, and whether the reports were reliable, in deciding what weight to give to the reports. We conclude that there was no abuse of discretion in this case.

Carrier complains that the hearing officer erred in admitting testimony regarding what benefits were paid to claimant in this case. Carrier asserts that Athe fact that carrier may or may not have paid income benefits in this case has no relevance whatsoever to any issue.@ However, we note that a Payment of Compensation or Notice of Refused/Disputed

Claim (TWCC-21) admitted into evidence set forth information regarding benefits paid in this case. Further, the fact that benefits were paid was discussed by the attorneys and the hearing officer prior to the beginning of the testimony. In fact, counsel for carrier stated on the record that claimant stopped receiving temporary income benefits and began receiving impairment income benefits in May or June of 1999. There is no indication that the hearing officer considered this in making her determinations in this case. We perceive no reversible error.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury. Carrier asserts that claimant cannot identify the substance he was exposed to or that he was exposed to a greater degree than the general public.

Claimant testified that: (1) on _____, he was working as an electrician and was crawling in the attic of a vacant house built in the 1800s; (2) he dropped his flashlight and, while Adigging@ for it, he noticed that it had disappeared in a layer of rodent dropping that was several inches deep; (3) he did not notice an odor but began to feel Achoked up,@ and he told his helper, Mr. V, that he was coming out; (4) he went outside to try to catch his breath; (5) when his condition did not improve, Mr. V drove him to a store and he took several over-the-counter antihistamine pills; (6) he told Mr. H, his supervisor, about the problem; (7) claimant spoke to the owner of the house, who said an exterminator had been up there Athe other day@ and had become Achoked up@ from the ammonia and rat droppings; (8) he saw his doctor, Dr. MA, the next day and received antibiotics; (9) he felt like he had a bad case of the flu for a while; (10) he went back to finish the work about two weeks later after the attic had been opened up and cleaned out; (11) he worked for about a week, his condition deteriorated, and he again sought medical treatment; (12) he saw a cardiologist, who said his heart was not the problem, and sent him to a pulmonologist, Dr. A, who said his lung capacities were down to about 28%; and (13) he was referred to other specialists regarding his lung problems. Claimant said culture plates were placed in the cleaned attic and that he was told they were covered in bacteria, while culture plates of his own residence were Anormal.@ Claimant testified that he had not had any prior problems with his lungs.[1] Claimant said he had smoked for many years and that he quit soon after this incident.

The record contains many medical reports regarding the diagnosis and treatment of claimant=s condition. All of the reports will not be discussed herein, but some of the evidence will be summarized. Briefly, a May 11, 1999, medical report from Dr. A states that: (1) a cardiac catheterization showed no major abnormalities; (2) a fiber optic bronchoscopy showed interstitial pneumonia with round cell infiltrations; (3) pulmonary function tests showed forced vital capacity of A37% of predicted@; (4) there was no evidence that claimant had allergies; (5) cultures of the attic space showed Ahigh levels of molds and bacteria@; (6) tests regarding hantavirus, aspiration pneumonia, and amyloid were negative; (7) an open-lung biopsy was performed; and (8) claimant=s condition was

[1]There was some conflict in the evidence in this regard.

caused by exposure to cypermethrin, which had been sprayed in the attic. In an August 1998 letter, Ms. S, a Acase manager,@ wrote to a physician and stated that the house where claimant had worked had been sprayed, probably with diazenon, one to two days before claimant entered the attic. In an August 23, 1998, letter to Mr. R, of AIG claims services (the claims company), Dr. D stated that: (1) he reviewed claimant=s medical records; (2) he relied on his training and experience in internal medicine and pulmonary and critical care medicine; (3) he is familiar with interstitial lung disease; (4) claimant had severe to moderate interstitial lung disease; and (5) Ain reasonable medical probability, the primary cause of the interstitial lung disease is the exposure he had in the house attic@; (6) based on the description of what was seen there and what happened to claimant after that, it was predicted that several substances produced the lung injury. In a May 28, 1999, letter to Ms. M of the claims company, Dr. JE stated that, A[i]n view of the rather clear-cut history without other etiologic factors I believe [Dr. A] is correct in attributing this injury to the workplace and/or a spray related to the workplace.@ Dr. JE noted that claimant=s lung disease is not the type of lung disease that is likely to be caused by smoking. Dr. JE=s letterhead states Ainternal medicine and pulmonary diseases@ above Dr. JE=s name.

The hearing officer determined that: (1) on _____, claimant, an electrician, entered the attic area of a very old home to consider potential electrical wiring; (2) the attic contained large accumulations of toxic substances, including very large quantities of rodent feces, mold, and exterminator=s chemical residues; (3) while crawling through the attic accumulations, claimant inhaled significant amounts of the accumulations; (4) claimant has been diagnosed with interstitial lung disease; (5) medical records show by reasonable medical probability that claimant=s interstitial lung disease was the result of his respiratory exposure to the accumulations in the attic; and (6) claimant=s presence in the attic put him at a greater risk of developing interstitial lung disease than that confronted by the general public at large.

An injured employee who sustains a compensable injury is entitled to lifetime medical benefits. See Section 408.021. The injured employee has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm. Section 401.011(26). The definition of "injury" includes occupational diseases. An occupational disease is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but 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." Section 401.011(34). To establish that he has an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Whether the necessary causation exists is a question of fact for the

hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence, Section 410.165(a), including the medical evidence. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts have been established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer was the sole judge of the credibility of the evidence and she decided what weight to give the evidence in this case. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We have reviewed the evidence and we find no error in the hearing officer's determinations. There was evidence as set forth above from which the hearing officer could have made her determinations. We conclude that the challenged determinations are not against the great weight and preponderance of the evidence. Cain, *supra*.

Carrier cites Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980) in support of its position. In Schaefer, it was inadvertently discovered that the employee had tuberculosis and he sought to prove causation. The court noted that there was no evidence that the particular strain of tuberculosis that the employee had was present in the soil where he had worked. In the case before us, there was medical evidence that claimant had an immediate onset of symptoms after exposure to the bacteria and substances in the attic. Cultures were taken in the attic and they showed a high level of bacteria. There was evidence that the house had been sprayed by an exterminator before claimant began working. In making her determination, the hearing officer could consider this evidence; the sequence of events, prompt onset of symptoms and rapid decline in claimant=s condition; the fact that claimant was 37 years old at the time of the incident; the evidence that claimant was not diagnosed with allergies, heart disease or other maladies that could have lead to or contributed to his lung disease; and the evidence regarding claimant=s prior good health and lack of lung problems. *See* Morgan v. Compugraphic Corporation, 675 S.W.2d 729 (Tex. 1984); Texas Workers' Compensation Commission Appeal No. 93668, decided September 14, 1993. In affirming, we note that this case was tried as an occupational disease case, but appeared to involve a specific injury rather than an occupational disease. In any case, we perceive no reversible error in the hearing officer=s determinations in this case.

Carrier contends the hearing officer erred in determining that claimant had disability beginning February 17, 1998. The hearing officer determined that claimant Ahas been unable to work due to the complications of his interstitial lung disease since February 17,

1998"; and that claimant=s statutory maximum medical improvement (MMI) date is February 2, 2000. Carrier=s assertion is that, because there was no compensable injury, there was no disability. Claimant=s testimony and the medical reports in this case support the hearing officer=s disability determination. We conclude that the disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We note that the hearing officer did not make a finding regarding the date of MMI, and we perceive no error in the hearing officer=s determination regarding the statutory MMI date. However, this determination was not necessary to the decision in this case and we strike it.

We affirm the hearing officer=s decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge