APPEAL NO. 92276

On May 19, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that the claimant, (claimant), the appellant herein, had not sustained an injury on (date of injury), to her back, when she fell while running an errand in the course and scope of her employment as manager of (employer).

Appellant contended that she hurt her back, leg, left ankle, and body generally when she fell. However, she was not filing a claim for her ankle. She asks that the decision be reviewed and reversed, essentially arguing that there was not sufficient evidence supporting Findings of Fact No. 11 and No. 13 of the hearing officer's decision. She has enclosed a letter from her doctor, not presented in the hearing, which she states supplies medical evidence of a back injury, and argues that conditions for which she was treated prior to (date of injury), are not for lower back pain. She asks that medical benefits be awarded.

Respondent replies that the evidence supports the decision of the hearing officer.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

Very briefly, the facts are as follows. (Ms. P), the appellant, managed the employer's business owned by her mother at the time of the injury. At the time of the hearing, appellant had acquired ownership of the business from her mother. She states that her mother, because of a closed head injury and loss of her short-term memory, was not able to manage her business . As well as acting as manager, appellant would fill in performing actual cleaning services if short-staffed. She stated that on (date of injury), she had traveled to the Social Security office in (city) with her mother in order to pick up a verification of her mother's social security disability income for the purpose of applying for a business loan from the Small Business Administration. She slipped and fell on her buttocks in front of her car when she came out of that office. She was unable to recall how she slipped, or what may have been the cause. Appellant states that she knew she twisted her left ankle. However, at the time, her back did not hurt. She drove on to (city) on a personal errand.

Appellant stated that her mother, for purposes of therapy, maintained a daily diary to assist with short term memory recollection. A diary page for (date of injury), records that appellant fell while coming out of the Social Security Office.

Before the accident that morning, appellant had seen her physical therapist, (Mr. R), for what she described as a back rub. She stated that she had prior back trouble related to female problems, and, as a result of a car accident which happened in January 1991, was also treated for her upper (but not lower) back. She stated that her back would hurt on occasions after she cleaned or lifted heavy equipment, but her assumption at that time was that she had muscle aches. On interrogatories put into record by the respondent, appellant

was asked if she had "previously been bothered by those parts of your body which you claim were injured in the subject incident." Appellant was also asked to describe the dates and nature of treatment received. Appellant responded only that she had injured one of her ankles in January 1989. In response to an interrogatory about prior claims for injuries, appellant disclosed that she had been involved in an automobile accident in January 1991.

Appellant states that she saw her physical therapist again on December 15th or 16th and told him she had been having back pain which was not relieved by her usual anti-inflammatory medication. She states that she told him about the fall, and he urged her to see her doctor. Because of the holidays, she was not able to see her doctor, (Dr. W), until January 2, 1992. Her lumbosacral spine was then x-rayed. According to an analysis of that x-ray by a referral doctor, (Dr. R), vertebral segments were found to have normal height and alignment. There was no evidence of spondylolysis or spondylolisthesis. Dr. R notes that "there is significant degenerative narrowing at the L4-L5 disc space with arthritic spurs," and his concluding impression is that appellant's x-ray showed localized degenerative changes at L4-L5. Appellant said she has not had a magnetic resonance imaging (MRI) exam. Medical records from Dr. W and her physical therapist indicate conditions that corroborate appellant's testimony relating to female problems and upper back pain, but there are also notes on April 16, 1991 recording that appellant consulted Dr. W about backache and leg pain. The decision also recites several earlier references back to 1990 documenting lower back and leg pain.

Considerable testimony was elicited about whether appellant, on behalf of the employer, had timely filed the Employer's First Report of Injury, apparently based upon respondent's misunderstanding that it would be relieved from paying benefits if this report were not timely filed. Because management of the employer in this case had actual notice of the purported job-related injury, the respondent would not be relieved from liability for the claim in accordance with the Texas Workers' Compensation Act (the 1989 Act), TEX. REV. CIV. STAT. ANN. Article 8308-5.02 (Vernon's Supp. 1992). The Act does not, however, provide a basis for withholding payment of benefits because the employer's report of injury is not timely filed.

Appellant testified that before and after the accident, she was compensated on a draw, rather than salary, basis. She stated that she has missed hours and a five-day period from work, but that her compensation had not decreased.

Entitlement for workers' compensation does not arise from accidents, but from compensable injuries. *See* Article 8308-1.03(5). An "injury" means "damage to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm," including occupational diseases. Article 8308-1.03(27). The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. Article 8308-6.34 (e). The hearing officer obviously believed that appellant fell, and that her fall occurred during a work-related errand. However, it is evident that he was not persuaded that a physical injury had occurred on this occasion, in large part because the medical evidence presented for the period after the accident showed a degenerative ailment, rather than a traumatic injury. The hearing officer

could find that no link between this ailment and the fall had been made. The claimant has the burden of proving, through a preponderance of the evidence, that an injury occurred in the course and scope of employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). A claimant must link any contended physical injury to an event connected to employment. Johnson v. Employers' Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.- Texarkana 1961, no writ).

The decision of the hearing officer will be set aside 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.).

The additional letter from Dr. W which has been forwarded with the appeal is not part of the record. The 1989 Act limits the appeals panel to consider only the record developed at the contested case hearing. *See* Article 6.42(a)(1). There is no showing that the letter, which essentially comments on matters already in evidence, could not have been obtained in time for the hearing. Although we may not formally consider it, we note that it is cumulative of matters and testimony already in the record and would not compel a reversal of the hearing officer's decision even if it had been considered.

There being sufficient evidence to support the decision of the hearing officer, we affirm.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Appeals Judge

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Robert W. Potts
Appeals Judge