APPEAL NO. 92448

A contested case hearing was held in (city), Texas, on July 28, 1992, (hearing officer) presiding, to determine whether respondent sustained an injury to her left foot on (date of injury) in the course and scope of her employment while working as a security guard. The hearing officer found that respondent had no injuries or problems with her left foot before experiencing pain on (date of injury), that she experienced left foot pain on (date of injury) after running one hundred yards and standing and walking for several hours in Corfam walking shoes to perform her assigned security patrol duties, and that she experienced an acute plantar fascitis sprain of her left foot on that date. Based upon these findings, the hearing officer concluded that the preponderance of the evidence, including the sequence of events, established that respondent sustained a compensable left foot injury on (date of injury). Appellant asserts the absence of evidence to support the decision. No response was filed by respondent.

DECISION

Finding the evidence sufficient to support the findings and conclusions, the decision of the hearing officer is affirmed.

Respondent testified that on March 12, 1992, she commenced employment with (employer) as a security guard in a parking garage of the Galleria. On (date of injury), she attended a meeting of the security guards at about 10:50 a.m. and had to run about 100 yards and go down some stairs to timely arrive at her post at 11:00 a.m. She wore a uniform and military style Corfam shoes. After several hours, her left foot began to ache. During the shift, she told fellow employee (C W) that her foot was hurting and that she thought her arch had fallen. By the end of her shift at 6:00 p.m., respondent was limping and her foot hurt her so bad she obtained a ride home instead of walking to the bus stop. The next morning, she couldn't walk on her foot because of the pain. She called her employer, spoke to a secretary, (Ms. L), and asked if she could recommend a doctor in the Galleria area. According to (Ms. L's) statement, essentially undisputed by respondent, (Ms. L) provided respondent with a phone number for doctors in the Galleria, advised respondent she hadn't been employed long enough to qualify for employer's health insurance, and asked whether respondent had hurt her foot on the job. She said respondent answered that "she didn't know, that she does patrols and walks, but that nothing specific occurred." Respondent conceded at the hearing that she did not know what had happened to her foot, but denied making a workers' compensation claim because she lacked health insurance.

Respondent, then 25 years of age, said she had been a serious athlete since age 11, was an aerobics instructor, and ran two miles every other day. Though concededly flatfooted, respondent denied prior foot injuries. On (date), respondent saw (Dr. N) who obtained a non-weight bearing x-ray of her foot (negative), and prescribed therapy three times a week for about three weeks. She later discussed returning to light duty work but employer advised no light duty was available and that her workers' compensation claim was being contested. Responding to a TV ad for a free exam, she visited (Dr. H), a podiatrist,

who obtained a weight-bearing x-ray, diagnosed acute plantar fascitis sprain, and provided her with some type of brace or support from which she obtained relief. A statement from (Dr. H) advised that had respondent been wearing a jogging type shoe while working, "then perhaps [she] would not have experienced the acute plantar fascitis sprain." Appellant's training and personnel coordinator provided evidence that respondent had selected her own uniform shoes (Bates "secret sneakers") which met employer's requirements for a shiny exterior, but which also were flexible and had interior support similar to athletic shoes. This witness said that the Bates shoes were used by 80 to 90% of employer's guards and were commonly used by military and police personnel, and by others on their feet all day. Respondent testified that while she had not previously worn shoes of that type, she had worn them while working approximately 60 to 72 hours per week since March 12th, and she regarded them as less flexible than athletic shoes.

Appellant argued that respondent failed to prove by a preponderance of the evidence that she sustained her left foot injury in the course and scope of her employment, pointing out that (Dr. H's) letter merely states that "perhaps" the injury would not have occurred had respondent been wearing athletic type shoes while working. The hearing officer found that respondent experienced left foot pain on (date of injury) after running 100 yards and standing and walking for several hours in her uniform shoes on duty; that her left foot pain worsened throughout the afternoon hours; that she was unable to walk the next day and was taken off work by (Dr. N); that she had no prior injuries or problems with her foot; and that she experienced an acute plantar fascitis sprain on (date of injury).

We believe the evidence, together with the inferences which the hearing officer could reasonably draw, support these findings and the resultant conclusion that respondent injured her foot while in the course and scope of her employment. Respondent had the burden of proving by a preponderance of the evidence that her injury occurred in the course and scope of her employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The testimony of lay witnesses and the circumstantial evidence may be sufficient to establish causation. Page v. Texas Employers Insurance Association, 544 S.W.2d 452, 455-456 (Tex. Civ. App.-Dallas 1976, *aff'd*, 553 S.W.2d 98 (Tex. 1977). In Hernandez v. Texas Employers Insurance Association, 783 S.W.2d 250, 252-253 (Tex. App.-Corpus Christi 1989, no writ), the court, considering the establishment of causal connection between the employment and asthma, stated the following principles:

Generally, lay witness testimony is sufficient to establish a causal connection where,

> based upon common knowledge, the fact finder could understand a causal connection between the employment and the injury. (Citations omitted.) This is true even where claimant's testimony is in direct conflict with expert testimony, However, expert testimony may be required where a claimant alleges that employment caused or aggravated a disease and the fact finder lacks ability, from common knowledge, to find a causal connection. (Citations omitted.) Since the cause of disease is more difficult to ascertain than the cause of a physical injury, it is less likely that a jury will have the

common knowledge that is required to establish causation. (Citation omitted.)

In this case, (Dr. H) found respondent to have suffered a foot sprain, not a disease such as fallen arches, and the hearing officer found that respondent sustained the sprain at work on (date of injury). We find there is probative evidence sufficient to support the findings and conclusion. Contrast this case with Texas Workers' Compensation Commission Appeal No. 92220 (Docket No. redacted) decided July 13, 1992, where the hearing officer found that the claimant failed to meet her burden of proving that her bunions and corns arose from her employment as a janitor, a job which required the claimant to walk between six and nine miles per day on concrete floors during her eight hour shifts. We there observed that there was no medical evidence whatsoever as to the possible causes of the diagnosed condition, and that the claimant's testimony that her symptoms occurred during a period of employment did not mandate the conclusion that her foot problems were caused by her employment. We opined that expert medical testimony was required to establish that the claimant's work activities caused or aggravated her condition because we did not believe her condition to be one within the general experience and common sense of persons generally, so that the trier of fact would be able to understand a causal connection between the condition and the employment. We noted that "[w]here a condition is within the general experience and common sense of persons generally, it is appropriate to allow the fact finder to know or anticipate that the condition could reasonably follow the specific events, and expert medical testimony is not required to establish causation. Texas Employers Insurance Association v. Ramirez, 770 S.W.2d 896, 901 (Tex. App.-Corpus Christ 1989, writ denied.)"

Appellant appears to raise a no evidence challenge to the hearing officer's conclusion that respondent sustained a compensable injury on (date of injury). In reviewing a no evidence challenge, we consider the evidence and inferences tending to support the pertinent findings and disregard all contrary evidence and inferences. If there is any evidence of probative force to support the findings, the challenge must be overruled. In reviewing a factual sufficiency of the evidence challenge, we consider and weigh all the evidence and set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We may not substitute our judgment for that of the hearing officer if the challenged finding is supported by some evidence of probative value and is not against the great weight and preponderance of the evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ). The findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Finding sufficient evidence to support the findings and conclusions, the hearing officer's decision is affirmed.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Robert W. Potts
Appeals Judge