APPEAL NO. 92626

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Following a contested case hearing on October 15, 1992, in (city), Texas, hearing officer (hearing officer) held that the appellant, claimant herein, did not suffer a compensable injury in the course and scope of her employment and that therefore her employer's workers' compensation insurance carrier was not liable for compensation as a result of this claim.

On appeal, the claimant challenges the hearing officer's finding that she suffered no harm to the physical structure of her body as the result of the (date of injury) incident, claiming that the evidence in the case demonstrates otherwise. The respondent, carrier herein, contends that the hearing officer's decision is supported by the evidence of record.

DECISION

Upon review of the record, we affirm the decision and order of the hearing officer.

Claimant was employed by (employer). She testified that at work on (date of injury), as she was lifting a box off a filing cabinet, dust and debris came out of the box and fell into her face and eyes. She said she went to the restroom and washed her face and eyes and went back to work. However, sometime thereafter her eyes began to tear and she began to experience sharp pains in her eyes. For a period of time, she ignored the problem, attributing it in part to having come into contact with poison ivy at home. In April, she said she first removed a sliver or particle from her eye.

Finally, on May 8th claimant saw (Dr. B), who had taken over her previous eye doctor's practice. He examined her, diagnosed "dry eye syndrome," and prescribed what she thought was an antihistamine. She lost the prescription before it could be filled, and she said on the evening of May 10th she went to the emergency room at (Hospital), complaining of intense pain from metal particles in her eyes. There, her eyes were washed out and a sedative administered. The next day she went back to Dr. B, who added the diagnosis of blepharitis (defined in Dorland's Illustrated Medical Dictionary, 27th Ed., as "inflammation of the eyelids"). She testified that an attendant at Dr. B's office told her she had an abrasion, although the medical records from Dr. B do not reflect this. Dr. B also gave her a new prescription for lenses. Claimant said she was also told she had a history of cataracts since 1982. She said she was upset that her prior doctor had not told her she had cataracts, and because Dr. B had prescribed steroids which she was concerned would worsen her condition.

Thereafter, claimant was seen by (Dr. P) on May 15th. In a September 1, 1992 letter addressed "To Whom It May Concern," Dr. P stated that "examination of the cornea and conjunctival did not reveal any foreign bodies to be present. Funduscopic examination revealed a normal fundus on the right eye and the left fundus had a small chorio-retinal scar near the disc with slight macular pigment change in the left eye." Dr. P also advised the

claimant that no foreign body or material was noted, "although this could have been removed at the time of her irrigation in the emergency room and that also, on occasion, small particles can spontaneously remove themselves from the eye." Dr. P concluded that claimant should undergo a routine eye examination sometime in the near future.

Claimant described her symptoms as involving blurry vision and teary eyes, which she said she also experienced before the incident at work. She also said she periodically experienced sharp pains in her eye--a symptom she said she did not have before the incident--and that she continued to remove particles from the fleshy part of her eye. A hearing exhibit written by claimant noted that she had removed material from her eye or eyes on seven occasions between April 4th and July 14th; she also testified that she had removed particles on two other occasions during the two weeks prior to the hearing. One such particle, taped to a piece of paper, was admitted into the record as an exhibit. Also admitted was an envelope containing silvery, metallic slivers which appeared to differ in size and appearance from the individual particle. Claimant said she collected the metal slivers from the windowsill at work, where they fell following the incident. She said she had not had the slivers analyzed, but that she was afraid they could cause permanent damage to her eyes.

Although claimant was terminated by employer on June 26, she was continuing to work at a second part-time job. She stated that no doctor has taken her off work.

The claimant in a workers' compensation case has the burden of proof to establish that a compensable injury arose in the course and scope of employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377 (Tex. App.-Beaumont 1976, writ ref'd n.r.e.). For an injury to be compensable, an employee must prove that there exists a causal relationship between the injury and the ultimate disability. Illinois Employers Insurance of Wausau v. Wilson, 620 S.W.2d 169 (Tex. App.-Tyler 1981, writ ref'd n.r.e.). In this case, the hearing officer essentially found a lack of causal connection between the (date of injury) incident and claimant's subsequent difficulties with her eyes. Upon review of the record, we find that the evidence supports this determination. While the medical evidence shows that claimant related the incident at work to her doctors, none of the doctors whose reports were made part of the record indicate either that they found any particles or that they diagnosed a condition that was caused by the incident. Dr. P, for example, who conducted several tests on claimant, acknowledged in his September 1st letter that small particles could spontaneously remove themselves from the eye, but did not relate that possibility to any injury or condition.

Claimant consistently testified regarding her symptoms, including eye pain and the periodic presence of particles in her eyes, which she attributed to the (date of injury) incident at work. However, the hearing officer as fact finder was entitled to give more weight to the evidence to the contrary. The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Article 8308-6.34(e). We will not disturb his decision where, as here, it is supported by sufficient probative evidence and where it is not so against the great weight of

the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant also contends that her constitutional rights were violated by her inability to obtain legal counsel to represent her. We have previously held that this panel is not the proper form to adjudicate constitutional questions. *See* Texas Workers' Compensation Commission Appeal No. 92391, decided September 16, 1992. Nonetheless, our review of the record discloses that the hearing officer gave the claimant opportunity to postpone the hearing or to go forward without counsel, and that the claimant chose the latter. In addition, claimant had received assistance from the Texas Workers' Compensation Commission's office of the ombudsman, and the hearing officer recessed the hearing at one point to allow the ombudsman to be present. We are satisfied that no error of any nature occurred in the proceeding below in this regard.

The decision and order of the hearing officer are affirmed.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Susan M. Kelley
Appeals Judge