APPEAL NO. 92633

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On October 14, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine whether the respondent, (claimant), was injured on (date of injury), while employed by (employer). An issue from the benefit review conference relating to whether timely notice of injury was given to the employer was waived by the carrier at the hearing, and its representative stated that such was based upon further investigation of the claim. The hearing officer determined that the claimant injured her left ankle and, left foot, and right knee through aggravation in the course and scope of her employment on (date of injury).

The carrier has filed an appeal contending that there is no medical evidence to support a connection of the claimant's injuries to her work. The claimant responds that the evidence supports her injury and disability since December 31, 1991.

DECISION

We affirm the hearing officer's decision.

Briefly, the presentation of the evidence was somewhat confused because the claimant testified at the hearing that she believed that her work activities in general had caused her feet and legs to be injured. Claimant's direct testimony was that she had sustained an occupational disease through being on her feet for most of the six hour work days. She testified that she started getting sick in (month year), and that she saw a doctor in (country), (Dr. V), who told her that she had tendinitis and that it could have been caused by trauma or by bending her foot, and that this could have happened at work or elsewhere. A translated medical record from Dr. V confirms this and notes that claimant was observed to have flat feet. She initially stated that she could not recall a specific incident happening at work. A doctor she subsequently consulted, (Dr. N), a podiatrist, arrived at the same conclusion (in December 1991) as Dr. V. On December 30, 1991, (Dr. J) diagnosed the claimant with left tibial tendinitis and excused her from work for three weeks.

Upon further questioning by the hearing officer, the claimant stated that she recalled the first time her ankle started hurting, she was assisting with moving racks of clothing on hangars. The claimant recalled that this happened (date of injury). The pain was sudden and sharp, and occurred after an hour to an hour and a half after she had been working. She stated that the pain was at first in her left ankle, but spread over the next few days to her foot. Claimant continued to work, experiencing progressively worse pain, until she resigned from the employer December 31, 1991, for the stated reason that she was unable to stand up due to worn tendons on her left foot. The claimant said that when she resigned, her pain was in her left ankle and foot, which would swell and cause considerable pain. Claimant had worked for employer since March or April 1989. However, she stated (as did two of her adult children who testified) that she had not experienced any foot or leg pain

prior to (month year).

The claimant, who had not worked since she resigned, said that she began treatment from (Dr. C) after that time. She stated that she had recently begun to experience pain in her right knee, and said that she thought this happened because she was favoring her left leg and therefore used her right leg more.

The medical records presented by the claimant document her left leg problems. As to the right knee, a letter from Dr. C, dated August 13, 1992, indicates that she first consulted him on December 30, 1991 for left leg and ankle pain and inflammation. He noted that he also detected, possibly at that time, right knee osteoarthritis. The first document that appears to document actual problems with her right knee, a record from Dr. C dated February 10, 1992, has not been accurately translated. Although the hearing officer notes that this document states that Dr. C's diagnosis was "left tibial osterior [sic] tendinitis of right knee," the Spanish document in fact states that the left leg is the affected member, and does not refer at all to the right knee. The first medical record accurately noting right knee pain by claimant is July 24, 1992. At this time claimant still had left ankle and foot pain that Dr. C noted.

The hearing officer is the sole judge of the weight, relevance, credibility, and admissibility of the evidence under the 1989 Act. Article 8308-6.34(e). In response to the carrier's objection that there is no medical evidence in support of the claimant's injuries, we would point out that lay testimony alone can be sufficient to establish the occurrence of an injury in the course and scope of employment. Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989). Expert medical opinion may be required, however, to establish causation where the injury or illness is not an area of common experience. *See* Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Hernandez v. Texas Employers' Insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ). The hearing officer did not find that the compensable injury was an occupational disease, but instead found that the injury occurred on (date of injury) while the claimant was moving racks. Whether or not the claimant can remember specifically bending her foot, she did sufficiently recall a definite time, place, and cause to support the hearing officer's findings with respect to her left foot and ankle injury. *See* Olson v. Hartford Accident & Indemnity Co., 477 S.W.2d 859 (Tex. 1972).

In our opinion, the nature of the claimant's injury did not require medical testimony to support the hearing officer's determination. Her recollection about the work-related activity which resulted in sharp sudden ankle pain, and her statements relating the progressive nature of the pain and its spread to her left foot, with resultant pain in her right knee from favoring her injured left foot, are sufficient to support the determination that such injuries arose from employment, and can be said to be within the common experience of the finder of fact.

The decision of the hearing officer is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge