APPEAL NO. 93294

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. STAT. ANN. art. 8303-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). A hearing was held on November 10, 1992, in the (city), Texas, with (hearing officer) presiding. The issues at the hearing included the extent of the injury, length of disability and whether there was a *bona fide* offer of employment.

The hearing officer found that on (date of injury), respondent (claimant herein) injured her right arm as well as her right leg and that the right arm injury had been further aggravated by her need to use a cane to assist in walking due to the right leg injury. The hearing officer also found that the claimant suffered disability from April 3, 1992, through February 4, 1993, due to her injury of (date of injury), through aggravation of her preexisting osteoarthritis, aggravation of the carpal tunnel syndrome in her right arm and recurrent right ankle sprain. The hearing officer concluded that the claimant has not received a *bona fide* offer of employment since the restrictions under which she can return to work had never been established. The appellant (carrier herein) argues that the hearing officer erred in a number of his findings, but the thrust of the carrier's appeal is that the claimant's injury was restricted to the right foot which should have healed in a matter of weeks. Thus the carrier appeals the decision of the hearing officer as to the extent of the injury and the length of disability.

DECISION

Finding no reversible error and the decision of the hearing officer not to be against the great weight and preponderance of the evidence, we affirm.

Claimant speaks little or no English and testified at the hearing through an English-Cambodian interpreter. The claimant testified that a forklift ran over her at work on (date of injury). The claimant testified that the forklift ran over her right foot but that the pain from the injury extended into her right leg. The claimant stated that when the forklift struck her she tried to push the forklift away with her right hand and as a result her elbow started hurting the day of the injury and this pain continued to worsen over time.

There are some contradictions and inconsistencies in the medical histories from the different doctors the claimant has seen. The claimant testified that she could not communicate with the original doctors because she cannot speak English and that later her daughter translated for her with her doctors. The record reflects that her daughter's English appears to be somewhat limited.

The day of the injury the claimant was taken to the hospital where she was diagnosed as having a contusion to the right foot. The claimant was off work for a period time, but returned to work for the employer a short time after the accident and continued to work with restrictions and on light duty until April, 1992, when she was placed on an off work status. During the period the claimant worked after her accident she testified that she worked with increasing pain in her foot and leg. Co-workers testified that the claimant complained of

pain during this period.

The claimant continued with medical treatment for her injury after returning to work, treating with different doctors. In April 1992, the claimant's treating doctor placed her off work. Claimant then changed treating doctors to Dr. D, an orthopedic surgeon, who continued claimant on an off work status and remained her treating doctor at the time of the contested case hearing. Dr. D, in addition to treating claimant's foot and leg, began treating her right arm. Claimant testified that her right arm had bothered her since the day of the accident, but that no doctor had treated it before Dr. D. Tests indicated that the claimant has bilateral carpal tunnel syndrome, worse on the right side than the left.

In regard to claimant's leg there is testimony that the claimant had sought treatment a month before her injury for osteoarthritis. There is conflicting medical evidence as to whether her injury aggravated this osteoarthritis. The claimant testified that before her injury of (date of injury), she did not have problems walking and was able to walk without the assistance of a cane. The claimant stated at the hearing that she was unable to walk without assistance and when using a cane, as ordered by her doctor, she is still barely able to walk. There was lay testimony that even prior to the accident that the claimant had an abnormal gait.

The carrier requested an examination by a Dr. W, an orthopedic surgeon, who suggested a return to light duty work and found that the claimant had reached maximal medical improvement (MMI) on June 8, 1992 with a zero percent permanent physical impairment. Yet his report relates knee problems to her injury and relates her carpal tunnel to the use of the cane.

The Texas Workers' Compensation Commission (Commission) appointed Dr. D, an orthopedic surgeon, as the designated doctor. Dr. D stated that claimant's right arm problems could have been caused or aggravated by the use of the cane. He also stated that while he did not believe that the claimant's knee problems are due solely to her injury, he felt that the injury had aggravated her right knee problems. Dr. D stated he was unable to certify MMI.

The record of the hearing was held open to allow the carrier to submit an additional medical report. This report of Dr. C, an occupational medical specialist, essentially states after a review of the records, it is his opinion that the claimant suffered a contusion of the right foot only and her other problems are unrelated to her on the job injury.

Article 8308-6.34(e) provides that the contested case hearing officer, as the fact finder, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given the evidence. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992; Texas Workers' Compensation

Appeal No. 92641, decided January 4, 1993. As finder of fact, the hearing officer resolves conflicts in the testimony and in the evidence. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In the present case there was contradictory medical evidence. The hearing officer chose to believe the evidence that stated that the claimant's knee and arm problems were aggravated by her on the job injury. This determination is within the province of the fact finder and has support in the evidence adduced at the hearing.

The carrier argues that the medical opinion of the doctors supporting the finding of the hearing officer are inadequate to do so because they are not uncategorical. The carrier submits that the claimant must prove that her injuries resulted from her accident to a reasonable medical probability, and the doctors in this case fail to say this. It has been held that the words "reasonable medical probability" are not necessary to establish that a doctor's opinion is based on reasonable medical probability. Transport Insurance Company v. Campbell, 582 S.W.2d 173 (Tex. Civ. App.-Houston [1st Dist.], 1979 writ ref'd n.r.e). Nor does the use of the word "possible" or other qualifying words identifying the cause of an injury preclude a doctor's opinion from being based on reasonable medical probability. Lucas v. Hartford Accident and Indemnity Co., 552 S.W.2d 796 (Tex 1977).

We do not find persuasive the chemical inhalation cases cited by the carrier in contradiction to the foregoing point, nor do we find them particularly relevant to the present case. The other arguments of the carrier boil down to a litany of reasons not to believe that the accident itself could have resulted in an injury to claimant's arm or leg. This remains an issue of fact for which there is evidence in the record to support the findings of the hearing officer. Furthermore, the carrier's arguments fail to deal with the issue of aggravation. It is well established that the aggravation of a existing or subsequent condition by a compensable injury is compensable. *See* Guzman v. Maryland Casualty Co. , 107 S.W.2d 356 (Tex. 1937); Hardware Mutual Casualty Co. v. Westbrooks, 511 S.W.2d 406 (Tex. Civ. App.-Amarillo 1974, no writ).

The carrier argues that there are cases that demand the decision of the hearing officer be set aside as being supported by insufficient evidence. While this is true, the present case is not one of them. In other words, the hearing officer's findings in the present case 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).

The decision of the hearing officer is affirmed.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Thomas A. Knapp
Appeals Judge