APPEAL NO. 93771

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On July 28, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue to be determined at the CCH was; "Whether the Claimant's abscess of her left foot requiring amputation of four toes is related to her compensable injury of (date of injury)." The hearing officer determined that the abscess of claimant's left foot, requiring amputation of four toes, was not the result of her compensable injury to her left foot on (date of injury).

Appellant, claimant herein, contends that some of the medical reports were in error, that she has established causation between the accident and the amputation of her toes, and requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant is a 49 year old lady who was diagnosed as being a diabetic in 1988. Claimant admits she had a problem with her feet swelling in 1988 but stated that only lasted a day or two. Claimant was employed by Texas Instruments, employer, and on (date of injury) "dropped a tub of calculators on my foot." Claimant's foot swelled up and she saw the company doctor who took her off work for approximately six weeks. Eventually in June 1991 claimant was certified as having reached maximum medical improvement with zero percent impairment and she returned to work. The last entry by the treating doctor apparently was "6-25-91." Claimant's diagnosis had been a foot contusion with no fracture. Claimant testified that in the next year or so her foot continued to swell when she was standing but the swelling would go down in the evening when she got off her feet. Claimant testified that on November 4th or 5th " - - of '92, my foot swelled up, and it didn't go down." Claimant testified she was admitted to the hospital where four toes on her left foot and part of her left foot were amputated on November 11, 1992. Claimant specifically denied knocking a callus off her left foot in the days or weeks prior to her November 1992 hospitalization.

Claimant apparently saw a Dr. M on November 6, 1992, who referred her to (Dr. K). Dr. K in a report dated February 9, 1993, recounts claimant's history of a foot injury in (date of injury), that she was off work six weeks and the off and on swelling. On causation Dr. K stated:

> I do believe that the previous injury could have at least caused enough abnormality in the left foot to allow it to more easily become infected and of course, the intermittent swelling when she stood on it, following the injury had left her thinking it was alright if her foot swelled up, because it would probably go back down.

The hospital discharge summary records, as reason for admission:

> She stated that she apparently "knocked a callus off the fourth right toe and then became very swollen and infected with drainage of purulent secretion." She stated that her foot had been draining very foul smelling material over the past several weeks. Due to these findings and symptoms, patient was thus admitted for further surgical treatment.

Claimant denies making a statement that she knocked a callus off her toe.

Claimant was also seen by (Dr. SM) who is a diplomate in orthopedic surgery. In a report dated June 4, 1993, Dr. SM notes claimant's prior 1991 injury and reviewed a bone scan dated "4-30-91." Dr. SM comments:

> I do not see evidence of focal accumulation of radionuclide at the area of the recent abscess. Plain film x-rays of the foot taken on 6-10-91 do not show any evidence of bone involvement, whereas the more recent x-rays of 11-6-92 do show evidence of gas formation in the soft tissues about the second, third, and fourth toes.
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> After review of this information I find I am unable to determine if any residual problems were present before the 1992 abscess episode. It is certainly within the realm of medical possibility that there was some undetected residual abscess or that the initial injury caused some breakdown in the skin, predisposing the patient to infection in the area. Again, I would have to say this is more within the realm of possibility than probability based on the information with which I have been provided.

A hospital consultation dated "11-18-92," apparently by (Dr. S) records that claimant ". . . has a history of longstanding ulceration and problem with her forefoot, particularly involving the third and fourth toes and web space between them." Claimant denies this notation and states she does not know where it came from.

Claimant was apparently seen by (Dr. W) on behalf of the carrier. Dr. W comments on claimant's foot condition as follows:

> . . .this claimant had a number of significant medical problems, the most important of which in relation to the foot infection, was her diabetes. She was also obese and she had hypertension. Hypertension can cause vascular disease which can furthermore inhibit proper healing of wounds in the feet, especially in

diabetics.

Diabetics are very prone to develop foot infections and unfortunately quite frequently, these are very poorly controlled and require amputation of various parts of the foot in order to control the spread of infection. It is clearly documented the claimant had a callus that fell off of the 4th right toe and "then it became very swollen and infected and draining a purulent secretion." The date of injury was (date of injury) and the hospital admission was 11/6/92 covering a period of more than 1 1/2 years. When there is an injury to the lower extremities especially involving possible bruising of bones, there is a tendency to develop an osteomyelitis in these areas within a week or two following the trauma. It is thought that the increased blood flow to the area because of the trauma allows some bacteria to form a nest and develop usually an osteomyelitis or bone infection. Injuries to the feet of diabetics are particularly prone to develop osteomyelitis in this manner, even if there is no breakage of the skin and subcutaneous tissues. It should be noted quite clearly, this claimant did not have osteomyelitis but her condition was an infection of the soft tissue around the bones.

CONCLUSION;

I am unable to find a causal relationship between the work-related injury of (date of injury) and the claimant's subsequent foot infection which prompted hospital admission on 11/6/92. This foot infection was most likely due to her diabetes and other medical problems, but most importantly a probable poorly cared-for callus on the foot in question.

The hearing officer determined that the abscesses on claimant's left foot which required amputation of four toes were not related to her compensable injury of (date of injury). Claimant contends that there were contradictions in the medical reports, that her diabetes is controlled by medication, and that Dr. K's report indicates that her compensable injury "could have caused enough abnormality . . .to allow it to become easily infected. . . ."

At the outset we note that whether the (date of injury) accident and resulting injury caused the November 1992 required amputation is a factual determination within the domain of the hearing officer. Section 410.165(a) of the 1989 Act states that 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 the evidence. The hearing officer had the medical reports as well as claimant's testimony available to him and was able to observe the claimant and her demeanor. The hearing officer was quite aware that the claimant disputed that she had knocked a callus off her left foot a few weeks earlier. Having this information available to

him, the hearing officer nonetheless found that the abscesses which required amputation of four toes ". . .were neither caused by nor a natural result of the left foot injury on (date of injury).

If there is conflicting or contradictory evidence, it is the hearing officer's duty to resolve conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93155, decided April 14, 1993. The hearing officer here clearly based his decision on the medical records and found that Dr. K's comment that claimant's (date of injury) accident "could have caused" the amputation more in the realm of a possibility rather than any degree of reasonable medical probability. Where sufficient evidence supports a fact finder's conclusions and his findings are not against the overwhelming weight of the evidence as to be clearly wrong and unjust, then the decision should not be disturbed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); *citing* Dyson v. Olin Corp., 692 S.W.2d 456, 457 (Tex. 1985); In re King's Estate, 150 Tex. 662, 664-665, 244 S.W.2d 660-661 (1951). We find sufficient evidence to support the hearing officer's decision.

The decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge