APPEAL NO. 93796

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S. Article 8308-1.01 *et seq*.). On August 6, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant (claimant) did not show that her foot injury resulted from compensable repetitive trauma but that she did timely report the allegation to her employer; no disability resulted since there was no compensable injury. Claimant asserts that sufficient medical opinion supports her position and that the assumptions of one doctor should be disregarded. Respondent (carrier) replies that the record contains sufficient evidence to support the decision.

DECISION

We affirm.

At the hearing the parties agreed that the issues were whether claimant has a repetitive trauma injury to her foot as a result of her job, whether she timely notified her employer of the injury, and whether she has disability.

Section 410.204(a) states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

On appeal the claimant states that (Dr. J) made three incorrect assumptions: claimant wore high heeled shoes; claimant was affected by congenital factors; and claimant's foot problem developed over a long period of time.

Claimant worked as a saleswoman for a large furniture store for four years; she is 58 years old. She described the furniture store in which she worked as comprising several acres and stated that she worked 12 hours per day, five to six days a week, and at times worked seven days in a week. She wore sensible shoes at work. In December 1991, she saw (Dr. T) for an examination; at this time she first mentioned her right foot pain. On June 4, 1992, claimant saw (Dr. M) (D.P.M. - podiatrist). His record for that visit is not provided in evidence, but a letter he wrote on April 29, 1993, refers to that visit. He notes pain in "the second metatarsophalangeal joint of her right foot and additional deformity of hallux valgus." ("Hallux valgus" refers to angulation of the big toe toward the other toes.) He advised her to stay off her feet and prescribed "orthotic devices." Dr. M also states that claimant later complained that her deformity of the big toe was increasing. Dr. M stated, "she most probably may have developed a repetitive stress or cumulative stress syndrome, due to the fact of the long hours on her feet in the normal course of her long work day." Then in a letter dated May 5, 1993, Dr. M added a hand-written note which said, "on (date of injury), it was discussed that her foot complaints were related to her work." Dr. M referred claimant to an orthopedic surgeon, (Dr. J) because of complaints of pain in her back.

Claimant saw Dr. J on October 5, 1992. He reported that because claimant's big toe crosses over the second toe, a gait abnormality resulted, which produced back pain.

He added, "(t)he overlapping of the toes, in my opinion, is the result of being on her feet on a hard surface for long hours over an extended period of time, wearing high heeled shoes or shoes which produce discomfort when wearing them over extended periods of time." Dr. J added, in a letter to the carrier dated March 9, 1993, that the foot problem has been present a long time and he assumed that her problem was related either to "tight high heeled shoes" or a "congenital predisposition;" he also stated that her back problem was aggravated by her foot problem. Claimant was seen by a physician selected by the carrier, (Dr. O) on February 22, 1993; he found a causal relationship between the back complaints and the foot complaints but did not offer an opinion as to the basis for the foot problem.

In claimant's appeal, claimant points out that she never discussed wearing high heeled shoes with Dr. J and says it is untrue. She also states that she did not discuss whether her foot problem had been present for a long time. She adds that the problem developed at the store. Finally, claimant added that she did not discuss a congenital predisposition with Dr. J and pointed out that her podiatrist did not indicate a congenital problem; she stressed that Dr. J was not a foot specialist.

The single finding of fact that directly addresses causation of her right foot problem states:

> On (date of injury), the claimant sustained damage to her right foot as a result of walking and standing activities that occurred over time, but such activities are ones to which the general public is exposed outside of employment.

Claimant's appeal stresses the different medical opinions and affirms that she wore low, flat shoes at work. She does not address the part of the finding that relates her activities to ones that the general public is also exposed.

In Texas Workers' Compensation Commission Appeal No. 92220, decided July 13, 1992, a 61 year old worker with bilateral hallux valgus and "prominent bunions" also claimed that her condition was caused by her work. In that case her doctor also stated that the problem was longstanding. The opinion pointed out that there was no medical evidence as to causation; it acknowledged that because symptoms occurred during a period of employment, this does not "mandate the conclusion that her employment was the cause of her foot problems."

In the case on appeal, there is some evidence of a medical nature that the foot problem was caused by the work through the opinion of Dr. M. On the other hand, Dr. J referred to congenital or shoe style conditions as possibly causative. The hearing officer could reasonably infer that a doctor could conclude from an examination of a patient that a certain problem had been present for a period of time whether it caused symptoms in the patient or not. Similarly, the hearing officer did not have to discount the opinion of Dr. J that a congenital condition may exist just because such a possibility was not mentioned by Dr. M. To find for the claimant, the hearing officer would have to determine in this case, since the cause of the condition is not common knowledge, that the medical evidence connects the

injury to the workplace. *See* Appeal No. 92220, *supra*. The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She judges the weight and credibility of opinions given by medical practitioners. *See* Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.). She could give significant weight to Dr. J's opinion that such deformed toe was caused either from a congenital predisposition or use of certain shoes whether claimant discussed her shoe usage with Dr. J or not. The hearing officer does not have to determine that a physician must be of a particular specialty in order to give weight to his opinion. *See* Hardware Mutual Casualty Co. v. Westbrooks, 511 S.W.2d 406 (Tex. Civ. App.-Amarillo 1974, no writ).

This review examined the finding of fact which indicates the injury was an ordinary disease of life to which the general public is exposed--notwithstanding that the carrier did not defend its position on that basis. This anomaly was not raised on appeal since neither the finding's position as to the general public nor the carrier's absence of evidence on this theory was questioned. The attack was raised only on the sufficiency of the medical evidence to sustain the hearing officer's decision that no compensable injury was shown. While Dr. M stated an opinion as to a relationship between work and the foot condition, the hearing officer is not required to follow an expert's deductions. *See* Gregory v. TEIA, 530 S.W.2d 105 (Tex. 1975). Neither of the other two physicians who saw claimant stated that her work for employer caused the condition. The decision of the hearing officer may be affirmed on any reasonable theory that is supported by the evidence. *See* Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied). With the medical evidence in dispute, the evidence sufficiently supports a determination that claimant did not show she sustained a compensable injury. Without a compensable injury, it follows that there can be no disability. *See* Section 401.011(16) which provides that disability exists when a claimant is unable to obtain and retain employment because of a compensable injury.

The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge