APPEAL NO. 941328

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 9, 1994, a contested case hearing was held. The record was closed on August 24, 1994, after receipt and comment on additional medical records. The issues were whether the respondent, (claimant), who is the claimant herein, had sustained an injury to his left foot and toes on (date of injury), that led to amputation of his lower leg, and whether he had disability as a result of such injury. He was employed by the (City), a self-insured political subdivision, on the date of his injury. It should also be noted that claimant had lost his right leg through amputation approximately ten months after his injury, but he was not asserting a claim relating to his right leg.

The hearing officer determined that the claimant had proven that his injury led to the condition resulting in amputation of his left leg below the knee, and that he had disability as a result from January 18, 1993, through the date of the hearing.

The carrier has appealed, arguing that the claimant had a disease, diabetes, which would have caused the same result, and actually did cause an amputation in his right leg several months later. The carrier argues that the diabetic condition was not aggravated by the twisted ankle. The claimant argues that the decision is correct, and points out once more that he is not seeking compensation for his right leg, but only his left.

DECISION

We affirm the decision and order of the hearing officer.

Briefly, claimant testified that as he was measuring the level in fuel tanks as part of his job for the city, he slipped from a cinder block step and twisted his left ankle, on (date of injury). He said his foot swelled right away and was swollen that night. Claimant continued to work through pain, and said he thought that the injury was minor and would resolve, but it did not, and he was examined by Dr. S on January 18, 1993. Dr. S referred him to Dr. O, and he was hospitalized. The first of several progressive operations to arrest the gangrene in claimant's left extremity was performed on January 19, 1993. His below-the-knee amputation occurred February 4, 1993.

Dr. S's January 18, 1993, initial medical report indicated that he noted redness and small bruises on claimant's left shin, several discolored left toes, and a contusion on the right ankle. His notes do not document swelling. Dr. O noted on January 19, 1993, that an aortogram and arteriograms of both lower extremities revealed moderate to marked stenosis in claimant's left internal iliac artery due to plaque formation, and a complete obstruction of the left superficial femoral artery. Stenosis in the right extremity was noted as slight to moderate.

Dr. O's medical and surgical records and reports indicate that blocked circulation to

claimant's left foot resulted in the development of gangrene. In answers to interrogatories, Dr. O stated that he believe the trauma on (date of injury), based upon reasonable medical probability, instigated an "underlined [sic] disease such as diabetes and peripheral vascular disease." Dr. S wrote on February 1, 1994, that in his opinion claimant's (date of injury), injury aggravated an underlying diabetic condition which resulted in his amputation of the left leg. He noted that he was only involved for an initial doctor's visit.

Claimant, who attended the hearing in a wheelchair, said he had not worked since January 18, 1993, and although the city had offered him two other jobs, they were not within his physical abilities to carry out. (No evidence was offered to the contrary, nor did carrier assert a bona fide job offer.) Carrier's primary theory of defense was that claimant had an ordinary disease of life, diabetes, leading to the amputation, and that any inability to work was not due to a twisted ankle.

During the hearing, claimant denied he had been diagnosed prior to his injury with anything more than "borderline" diabetes. Although he said he took some pills for this, it was not until after his amputation that he was treated with insulin. Notes from his previous doctor, Dr. A, do not concretely diagnose diabetes.

Claimant agreed that he had similar vascular developments with his right leg, leading to amputation in October 1993. He stated that Dr. O told him this occurred because after losing his left leg, he put more pressure on his right leg.

Initially, we would observe that we do not necessarily perceive the issue to be one solely of whether the claimant's diabetic condition was "aggravated" by the injury, so much as extension of the compensable injury. The employer takes the employee as he finds him. The fact that some underlying disease enhanced the affects of a work-related injury does not render the amplified consequences of an injury noncompensable. Sowell v. Travelers Insurance Co., 374 S.W.2d 412 (Tex. 1963). Carrier did not dispute that claimant sprained his ankle on (date of injury). The 1989 Act defines "injury" to include damage or harm to the physical structure of the body "and a disease or infection naturally resulting from the damage or harm." Section 410.011(26). The evidence indicates that the swelling after the sprained ankle caused otherwise diseased blood vessels to close, resulting in development of gangrene. The gangrene that resulted was within the scope of the infection "naturally" resulting from the sprained ankle, and the necessary medical treatment for the condition was eventual, and unfortunate, amputation of the leg.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza, *supra*. This is equally true of medical evidence. Texas Employers' Insurance Ass'n v. Campos, 666 S.W.2d 286, 290

(Tex. App.-Houston [14th Dist.] 1984, no writ). A carrier that wishes to assert that a pre-existing condition is the sole cause of an incapacity has the burden of proving this. Texas Employers' Insurance Association v. Page, 553 S.W.2d 98, 100 (Tex. 1977); Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1992. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate , 244 S.W.2d 660 (Tex. 1951). The evidence in this case sufficiently supports both a theory of an aggravation of diabetes and compensability of gangrene as part of the left leg injury and its natural consequences (which include enhancement caused by the underlying diabetes and vascular stenosis).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge