APPEAL NO. 950004
FILED FEBRUARY 10, 1995

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing (CCH) was held on November 23, 1994. He determined that the appellant (claimant) did not sustain a compensable injury on _____, that the extent of the asserted injury could not be determined since no compensable injury was sustained, that she failed, without good cause, to timely report the asserted injury, and that she did not have disability. The claimant appeals urging, in essence, that there was evidence supporting the claimed injury, the extent of the injury, that timely notice was given or there was good cause, and that she had disability. The claimant also complains that several written statements were admitted over objection. Respondent (carrier) posits in its response that there is sufficient evidence to support the determinations of the hearing officer and in an earlier request for review urges that the hearing officer erred in excluding a peer review report for failure to timely exchange.

DECISION

The decision is affirmed.

The evidence is adequately set forth in the hearing officer's Decision and Order and will only be briefly summarized here. The claimant, who asserts injury to her foot, leg and back, testified that she was injured on _____, when she attempted to open a silo door at work and a hinge apparently broke and she also had to push the heavy door with her hands. Since the door was stuck she had to kick it with her foot. In any event, the incident was reported and a safety report was written up. Apparently, it was handled as only a safety matter although the claimant said she told the author of the report that her right foot and leg felt numb. The author of the report testified that she asked the claimant if she was injured and was told "no" by the claimant. Evidence from other supervisory personnel deny that the claimant stated anything about being injured either at the time or later at some type of safety meeting. In any event, the claimant continued to work at her job until she completed her shift on March 7, 1994, at which time she testified she could no longer work because of her injury. Medical records in evidence well documented that the claimant has suffered problems with her feet over a long period of time and had been treating with a (Dr. L) since 1988. Dr. L diagnosed the claimant's condition as chronic plantar fascitis and pes planus (flat feet), a diagnosis that was also made in much earlier medical records. The claimant had also had earlier foot surgery. The claimant acknowledged that she did not tell Dr. L of a work-related injury until March 22, 1994, and that she filed a notice of injury with her employer on March 24, 1994. Other than the history portion of the medical reports wherein claimant later opined that her current foot problem resulted from the _____, incident at work, there is no medical opinion based on reasonable medical probability that the foot condition is related to the work.

In our opinion, there is clearly sufficient evidence to support the findings and conclusions of the hearing officer. While there was some conflict in the evidence, both as to the causal relationship of the injury to the work and on the issue of timely reporting the injury, this was for the hearing officer to resolve. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). There is no doubt that the claimant has had for a lengthy period of time and continues to have serious problems with her feet and possibly legs, however, the evidence of any causal connection between her current condition and her work is clearly not the great weight and preponderance of the evidence warranting us to substitute our judgment for that of the hearing officer and set aside his findings. *See* Hartford Accident and Indemnity Co. v. Hale, 400 S.W.2d 310 (Tex. 1966); Texas Workers' Compensation Commission Appeal No. 941357, decided November 10, 1994. Given the nature of the injury, particularly with the claimant's medical history, medical evidence establishing causation was necessary. Texas Workers' Compensation Commission Appeal No. 92220, decided July 13, 1992; Texas Workers' Compensation Commission Appeal No. 93390, decided July 2, 1993.

Regarding timely notice, the hearing officer apparently did not accord preponderant weight to the testimony of the claimant regarding notice of injury on January 21st, when considered against the testimony of the supervisors, the lapse of time before any indication of a work relationship was indicated in any medical record, the claimant's continued working for some time following the incident, the filing of the notice of injury on March 24, 1994, and the testimony that the claimant did not appear to have any injury during and up to March 7, 1994, when she testified that she stopped working. We conclude there was sufficient evidence to support his determinations. Clearly, the determinations are not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. Employers Casualty Co. v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ).

The hearing officer admitted copies of two signed statements from employees over the objection of the claimant as not being the originals and also being hearsay. The statements had been properly exchanged. In this regard, Section 410.165 provides:

EVIDENCE

(a)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 to the evidence. Conformity to legal rule of evidence is not necessary.

(b)A hearing officer may accept a written statement signed by a witness and shall accept all written reports signed by a health care provider.

We find no merit to the assertion of error regarding the admission of the copies of the signed written statements. Regarding the issue raised by the carrier concerning the peer review report that was rejected on the basis of not being timely exchanged. While a plausible basis was placed on the record by the carrier for the delay and the peer review report was provided to claimant some 10 days in advance of the CCH, circumstances which might well warrant the admission of the document by the hearing officer, we need not resolve the matter under the circumstances. Clearly, no prejudice has resulted even if the document was erroneously kept out and any ruling would not affect the outcome of the case inasmuch as the carrier has been held not liable for benefits.

For the foregoing reasons, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge