APPEAL NO. 980262
FILED MARCH 27, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On January 15, 1998, a contested case hearing was held in (City), Texas, with (hearing officer) presiding. He determined that respondent (claimant) injured his left knee at work on _____, and had disability from September 11, 1997, through October 10, 1997. Appellant (carrier) asserts that the evidence was not sufficient to support a finding of injury in the course and scope of employment, citing the lack of medical evidence as to causation; disability is also contested. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant began working for (employer) on September 2, 1997. He testified that he injured his left knee on _____, while at work. He described his work as cleaning water coolers, in which he spent a certain amount of time on his knees. The amount of time was in issue, with claimant testifying that he spent up to four hours a day on his knees, after previously giving a statement in which he said he spent all day on his knees. Mr. W, a general partner, who worked at the site, testified that claimant spent an hour to an hour and a half on his knees, after previously giving a statement in which he said that "maybe three hours out of the whole eight hour day, you'd be actually on your knee." The hearing officer found that claimant spent up to four hours a day on his knees and that finding of fact is sufficiently supported by the evidence.

Claimant testified that his knee was painful on _____ and the next day it was painful and swollen; at that time he made some reference to his painful knee to Mr. W; the evidence was conflicting as to whether claimant at that time identified the kneeling as causative or not, but there was no issue at this hearing as to timely notice.

When claimant saw a doctor (the date of the medical report is not legible but the hearing officer identified the date as September 11, 1997), his knee was placed in an immobilizer and, contrary to the assertion of carrier, the report states that claimant was "given crutches and instructions on how to use." He was also "referred to an orthopedic physician next week Sept. 15th-20th." Another report, apparently on the same day, indicates that claimant referred to kneeling at work in presenting for care of his knee. This report noted that the left knee was swollen and warm. It too, noted that an immobilizer and crutches were provided. An x-ray report dated September 12, 1997, noted "diffuse soft tissue swelling seen along the distal medial aspect of the left knee but no foreign body interstitial emphysema or intraarticular effusion of a left knee is identified."

The above evidence is sufficient to find that claimant's left knee was injured. The carrier argues that medical evidence is needed to show the cause, pointing out the relatively short period of time claimant had worked for employer, the double thickness of pants he wore, and the lack of bruising. While claimant agreed that he wore pants and had coveralls on over his clothes, Mr. W acknowledged that he did not know of any protective covering for claimant's knees, and claimant stated that he was offered knee pads only after he reported his knee being painful. While carrier points out that there was no bruising, no medical opinion was provided indicating that an injury from kneeling would include bruising. As to the short period of time, the hearing officer found that claimant spent four hours on his knees; even Mr. W stated in a written statement that he asked claimant if he twisted his knee climbing ladders or "maybe hurt it kneeling on the catwalk." The catwalk was described as a corrugated surface where claimant did some of his work on his knees. Mr W's question could be interpreted as an acknowledgment, by a layman, that injury could occur from kneeling on such a surface. In addition, there was no evidence that claimant injured his knee in any other way.

The circumstances of this case do not require that medical opinion determine causation. While the period of time found by the hearing officer, four hours, would not appear long if the question involved standing on one's feet or use of one's hands in repetitious motion, the hearing officer could consider that kneeling on a hard surface, whether corrugated or not, is not the common usage of the knee, just as crawling on one's elbows is not the common usage of the elbow. The hearing officer could also consider that Mr W's statements did not indicate that knee pads were used, but that Mr. W, knowing the amount of time claimant had knelt at work, believed that the kneeling could cause an injury.

Claimant testified that he was not able to see an orthopedic surgeon because the claim was not accepted by the carrier. He acknowledged that the doctor he originally saw at the hospital did not take him off work; however, he also testified that the employer would not allow him to return to work without a release which he did not receive. Claimant also testified that he could not clean the coolers because he had to kneel and his knee remained swollen for a month. Based on this testimony, along with the immobilizer and crutches claimant was given for his knee injury, the hearing officer found that disability lasted the 30 days that claimant's knee was swollen. With no medical evidence to the contrary, the determination as to disability is sufficiently supported by the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge