APPEAL NO. 991809

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 29, 1999, a contested case hearing was held. At issue was whether the respondent, who is the claimant, sustained a compensable injury on _____.

The hearing officer held that the claimant sustained a compensable injury to his foot, a plantar faciitis, in the course and scope of employment.

The appellant (carrier) appeals, arguing that expert medical evidence in this case was required to establish causation and was not present in the record. The carrier argues that the medical evidence raised only the "possibility" that the claimant's foot condition was related to his employment. The carrier argues that the claimant's flat foot condition was the reason for his development of plantar fasciitis.

DECISION

We affirm, pursuant to our standard of review.

The claimant was employed on a 4:00 p.m. to 2:00 a.m. shift, four days a week, for (employer). The claimant said that he wore OSHA- specified steel toed shoes. He said that he operated a label printing press, the control panel of which came to his thigh. The claimant stood on a rubber mat over a concrete floor. He said that on _____, as he rose on tiptoe to look over the control panel at something he called "a web," he felt a tingling sensation run down his left leg. He said that when he would stand on tiptoe, which he estimated he would do 10 times a shift, his leg would be caught by the control panel. He said he would push up more on his left toes than his right.

The claimant said he sat down and shook his leg and rubbed it. The sensation he felt ran from the thigh on down. Then, the claimant said, as he tried to walk around, he felt a sharp pain in his heel. He said he had worked for two and one-half years on this particular machine.

He did not seek medical treatment right away, assuming that this sensation would wear off. He reported the injury in late February 1999 (there was no issue raised over timely reporting of the injury). His employer sent him to a minor emergency clinic on or about March 24, 1999. He was diagnosed with a left heel spur.

The claimant received treatment with anti-inflammatory medications and had not missed time from work. The claimant subsequently sought treatment from Dr. T, a podiatrist. He said that Dr. T felt that his injury was due to the "specific trauma" that occurred on _____. He wore inserts in his shoe to treat the heel spur and said that his foot felt pretty good. Dr. T told him he had flatter than average feet.

The claimant agreed that after the insurance carrier regarded Dr. T's first medical opinions as "inconclusive" on the matter of causation, he went to Dr. T's office and requested a good explanation. The claimant said that he had no relief from pain after _____, and that it gradually grew worse, even at home, and this is why he sought medical treatment. The claimant said his pain actually "picked up" from January to March. He said that Dr. T had never attributed his problem to his steel toed shoes.

On May 5, 1999, Dr. T wrote that the claimant sustained an injury to his foot in September 1998, and that, given his description, this "may be the cause of his left heel pain diagnosed on April 21, 1999. . . . " On June 2, 1999, Dr. T wrote that the claimant had traumatic plantar fasciitis and this was "in all reasonable medical probability" caused by the incident at work. Dr. T's case notes in early April describe the claimant's condition as a traumatic plantar fasciitis that occurred at work.

Repetitive trauma was not the theory of recovery of the claimant nor was aggravation of a flat foot condition. There is no evidence that the claimant's plantar fasciitis was the result of any flat footedness. As to whether there was sufficient support in the record for finding that the claimant's condition arose from the "tip toe" incident he described on _____, we note that whether medical evidence is required to prove causation or not, medical evidence which is considered by the trier of fact as bearing and probative on causation must rise to the level of reasonable medical probability, rather than mere "possibility." Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). An unpublished decision in Texas Workers' Compensation Commission Appeal No. 982994, decided February 5, 1999, upheld a hearing officer's determination that plantar fasciitis can be found from a single trauma. Given Dr. T's notes and letters, the hearing officer could conclude that the wording, but not the content, of Dr. T's opinion on causation changed, and that he was always of the opinion that the condition he saw arose from the trauma of elevating on tiptoe in order to see over the machine. While this is plainly a case that another fact finder could see a different way, the Appeals Panel will not second guess the trier of fact absent a great weight and preponderance of the evidence to the contrary of his decision. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We cannot, applying that standard here, set aside the hearing officer's decision, which has sufficient support in the record. Accordingly, we affirm his decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge