

## APPEAL NO. 991857

Following a contested case hearing held on July 16, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by finding that on \_\_\_\_\_ (all dates are in 1999 unless otherwise stated), the appellant (claimant) did not injure his back as a result of any mechanism of the workplace in that his back problem is the result of an ordinary disease of life and by concluding that on that date claimant did not sustain a compensable injury. Claimant has requested review of the finding and conclusion, asserting that his back was injured due to the conditions of his workplace and that his herniated nucleus pulposus (HNP) is not the result of an ordinary disease of life. The respondent (carrier) asserts in response that the evidence is sufficient to support the challenged finding and conclusion.

### DECISION

Reversed and remanded.

Claimant testified that on \_\_\_\_\_, while employed as an administrative assistant to the employer's general manager with largely secretarial-type duties, he arose from his executive-style desk chair to go file some papers and "felt a catch in [his] hip," in the area by his right hip pocket, which went down his leg. He said it was like getting a catch in the hip while out running or working out and that he shrugged it off and expected it to resolve but that it did not improve and he mentioned it to the general manager. Claimant also said he recalled nothing unusual about getting up from the chair such as twisting and that if he was holding anything in his hands it was paper. As he put it, "I just stood up and it caught." Claimant further stated that he intended to see the company doctor the next day but went to an emergency room (ER) that night and the next day commenced treatment with Dr. W. The ER imaging report states the impression as multilevel degenerative spondylosis. The patient history sheet, apparently completed by claimant for Dr. W, answers the question about his activity at the time of the accident by stating, "getting up from a chair." Claimant said that Dr. W prescribed medications; that he was later referred to Dr. J for epidural steroid injections which initially helped; that an MRI revealed an HNP at the L4-5 level; that on April 1st he underwent spinal surgery (a microdiscectomy at L4-5 on the right side); and that on June 25th he underwent a second spinal operation and is now feeling "real well." Claimant stated that he drew both short-term and long-term disability benefits and that he used his group health insurance to pay for his treatment and that he returned to work on May 25th. He denied having any previous back problems other than a back sprain 20 years earlier.

Dr. W's initial report reflects that claimant, then 51 years of age, gave a history of being injured at work "getting up from a chair" and that Dr. W diagnosed a probable HNP on the right side at L4-5. Dr. W reported on February 17th that claimant "has several abnormalities in his spine including what appears to be a significant protrusion of disc at the L1-2 level" and the large disc herniation at L4-5 on the right "which elevates the nerve root on that side." Dr. W's March 3rd report states that it appears that claimant's condition "was

caused by an on-the-job injury" on \_\_\_\_\_ when claimant was injured at work "trying to get up from a chair . . . [t]he twisting movement which he made in attempting to get up from the chair caused the onset of severe right leg pain and, to a lesser degree, back pain." Dr. W wrote on May 13th that it is his opinion with reasonable medical certainty "that the activity which [claimant] describes on \_\_\_\_\_ while employed as an administrator at [employer] was the cause of his herniated disc," and that claimant has no history of prior back problems and "the findings of acute herniated disc did not suggest any other etiology."

Claimant had the burden to prove by a preponderance of the evidence that he sustained an injury in the course and scope of his employment. Injury means damage or harm to the physical structure of the body and includes an occupational disease. Section 401.011(26). Occupational disease is defined in Section 401.011(34) and includes repetitive trauma injury.

In Texas Workers' Compensation Commission Appeal No. 972235, decided December 17, 1997, the Appeals Panel reversed the hearing officer's determination that an employee who rolled her chair back from the desk, attempted to stand up out of her chair, and felt excruciating back pain sustained a compensable back injury, stating that "[s]tanding up, without more, from sitting in a chair is the type of activity that is a normal occurrence without regard to the work situation and has nothing to do with furthering the business of the employer." Noting and citing Appeals Panel decisions to the effect that the physical effects of repetitive standing or walking are generally not compensable injuries but rather are an "ordinary disease of life," our decision stated that while there is no "ordinary disease of life" or similar statutory exception for injuries involving specific instances of trauma, employees in those cases must still prove that the alleged injury resulted from an activity originating in their work. In other words, the mere act of standing up from a chair, with nothing more, is a common, normal act which does not amount to the furthering of the employer's business.

Similarly, in Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998, we reversed a decision that an employee who was merely walking down a hall when her knee gave way sustained a compensable injury. The majority opinion stated that "[t]here was no nexus to the employment other than the fact that the incident occurred on the employer's premises and we do not regard injury from any and all types of body motion on an employer's premises to be, *per se*, caused by the employment."

In Texas Workers' Compensation Commission Appeal No. 950103, decided March 3, 1995, the Appeals Panel has affirmed a determination that an employee sustained a compensable injury while in the act of sitting down at his desk when he felt a pull and burning pain in his low back. The decision stated that each case must be determined upon its own peculiar facts. The decision also noted the distinction between the cases involving repetitive sitting and standing, which may be an ordinary disease of life, and a discrete injury occurring at a definite time and place.

In Texas Workers' Compensation Commission Appeal No. 970100, decided February 28, 1997, we reversed and remanded where the claimant alleged a specific incident as the cause of her injury, namely, getting out of her chair at work and twisting around the arm of the chair, and the hearing officer determined that claimant had sustained an ordinary disease of life.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Although some of Dr. W's recitation of the history of the injury, obtained from claimant, refers to his twisting as he rose from the chair, claimant himself did not testify to that effect and indicated he simply arose from his chair in his usual manner when he felt the "catch" in his right hip.

Notwithstanding the state of the evidence in this case, however, we believe that the hearing officer has made his determination on injury in the course and scope employing an erroneous legal standard. The evidence quite clearly does not establish that claimant sustained an occupational disease type of injury but rather a discrete, specific, accidental injury. Accordingly, we must reverse the decision and order, as we did in Appeal No. 970100, *supra*, and remand for further consideration and factual findings and legal conclusions employing the correct legal standard.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Judy L. Stephens  
Appeals Judge