APPEAL NO. 000910

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 27, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that claimant is not barred from pursuing workers' compensation benefits because of an election of remedies. Claimant has appealed the adverse injury determination, essentially rearguing the evidence he believes established a repetitive trauma foot injury. The response filed by the respondent (carrier) takes issue with claimant's presenting new evidence on appeal and contends that the evidence is sufficient to support the challenged factual findings and dispositive legal conclusion.

DECISION

Affirmed.

The hearing officer's Decision and Order contains a detailed, thorough recitation of the evidence with which neither party takes issue. Accordingly, we will set forth only so much of the evidence as is necessary for our decision. Claimant testified that while employed by (employer) as a "utility" worker in the bottled beer production line area, he developed bilateral plantar fasciitis of his feet by having to stand on a narrow chain guard in order to reach the rear magazine on a "targeteer" machine and load 12-pack carton partitions into the magazine. He said that he was not a regular machine operator and that his duties over the course of the seven working hours on his eight-hour shifts were manifold including dumping hoppers, dumping cardboard, driving a forklift to haul materials, and also relieving certain machine operators when they were on lunch or other breaks. He said it was on those latter occasions when relieving the targeteer machine operators on breaks that he sustained the injury to his feet. Claimant explained that in order to reach and load cardboard partitions into the rear magazines on the machines, which inserted them into the 12-pack beer cartons, he had to step up off a platform and stand on a narrow chain guard; that the chain guard did not support all of his feet; and that while standing on the chain guard with both heels extended off the chain guard, he then had to put all his weight on his right foot with his heel extended as he leaned forward to reach and load the rear magazine on the two machines. He further stated that the partition loading process took about one minute and that he performed this activity approximately 15 times in a 30-minute period when the operators he relieved were on break. Claimant indicated that he had the onset of his foot pain on _____, and maintained that this activity was repetitious and caused the injuries to his feet. He further stated that when he first sought medical treatment, he told the doctor that he "had an on-the-job injury, that [he] started feeling pain in his feet," and that the doctor diagnosed plantar fasciitis and referred him to a podiatrist, Dr. L, to whom he also explained what he did to cause the problem. He acknowledged that Dr. L could have thought he "was doing the refills eight hours a day up on that chain guard."

In addition to appealing the dispositive legal conclusion, claimant challenges factual findings that he would relieve his two coworkers on the targeteers for each of their half hour lunches daily as well as the two 15-minute breaks they had twice a day; that there was little evidence of the additional time claimant spent relieving the two coworkers for personal business; that although some stretching was required while loading the second targeteer magazines, there was insufficient evidence that the stretching would cause the plantar fasciitis; that there was scant evidence of repetitive motions and the reaching events were short in duration and not repetitious in nature as claimant performed his normal tasks in between; that an accurate history was not provided to the treating doctor who linked the plantar fasciitis to the work environment; and that the medical evidence of causation lacks credibility. Claimant did not dispute a finding that he was not on the guard for more than a minute at a time.

The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992, observed that to recover for a repetitious trauma activity injury one must prove not only that repetitious, traumatic activities occurred on the job but must also prove that a causal link exists between these activities and the incapacity, that is, "the disease must be inherent in that type of employment as compared with employment generally." The Appeals Panel also stated that a claim of injury by repetitive motion should be supported by evidence of the extent and nature of the work performed and some description of the repetitive activities that would affect the employee in a way not common to the general population. *See, e.g.,* Appeal No. 92272, *supra*; Texas Workers' Compensation Commission Appeal No. 950502, decided May 15, 1995. *Cf* Texas Workers' Compensation Commission Appeal No. 94941, decided August 25, 1994.

Claimant had the burden to prove by a preponderance of the evidence that he sustained the claimed injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. The hearing officer's decision explains why she did not find claimant's evidence persuasive and we have no basis to substitute our judgment for hers.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

CONCUR IN RESULT:

Gary L. Kilgore
Appeals Judge