

APPEAL NO. 001322

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 May 10, 2000. The hearing officer determined that the appellant's (claimant) bilateral tarsal tunnel syndrome, plantar fasciitis, and ankle derangement, diagnosed by Dr. L, were not results naturally flowing from the compensable injury sustained on _____, and that the claimant did not suffer damage to the physical structure of her feet or ankles in a slip and fall at work on _____. The claimant appeals, urging that the hearing officer's decision is against the great weight of the evidence. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that she worked for the employer as a computer operator and materials handler and that on _____, as she was turning to exit through a door, her feet crossed and she fell. The claimant testified that when she fell she hit the left side of her buttocks on the floor and her "feet came downward." The claimant also testified that after the fall she had pain and cramping in her feet. The carrier stipulated that it accepted liability for the _____, injury to the claimant. The hearing officer found that the claimant injured her neck, back, shoulder, and arms when she fell on _____, but that the bilateral tarsal tunnel syndrome, plantar fasciitis, and ankle derangement diagnosed by Dr. L in July 1999 were not results naturally flowing from the _____, injury. The hearing officer also found that the claimant did not suffer damage to the physical structure of her feet or ankles when she slipped and fell at work on _____.

The claimant testified that she sought medical treatment with the medical doctors at (clinic) on February 10, 1999, and told them that, in addition to having pain in her shoulder and hand, she was experiencing cramping in her feet and had ankle and foot problems. The claimant testified she was not satisfied with the medical treatment so, upon referral of her attorney, began treating with Dr. F. The claimant asserted that when she first presented to Dr. F she told him about her foot problems and that he subsequently referred her to Dr. R, to whom she related her foot complaints.

The claimant stated that she was examined by Dr. S and she asked him to look at her feet and ankles. The claimant testified that Dr. S offered to speak to Dr. F about a referral to a podiatrist. The claimant was examined by Dr. L, Dr. G, Dr. P, Dr. D, and Dr. Gh. The claimant testified that she complained about her foot and ankle problems to all of these doctors; that Dr. L eventually recommended surgery on her feet; and that Dr. Pe took over as her treating doctor in December 1999, when Dr. F left the clinic.

Medical records from the clinic indicate that the claimant sought medical treatment on February 10, 1999, for pain in her neck, left shoulder, buttocks, and thoracic and lumbar areas of her back. The February 10, 1999, intake and history record contains an entry of "also c/o cramp with 2nd digit toe. . . ." The claimant returned for treatment two more times with no complaints of foot or ankle pain documented, the last on February 26, 1999.

The claimant subsequently presented to Dr. F on March 1, 1999. The claimant's history and physical on this date does not reflect any complaint of foot or ankle problems. The claimant was examined by Dr. S on March 11, 1999, who noted no complaints of foot or ankle pain. He found that sensory, motor, and musculoskeletal testing was all normal and that heel walking, toe walking, and squatting were all normal. Heel/shin testing was also normal. The claimant was examined by Dr. R on March 18, 1999, who documented that the claimant had low back pain radiating to the left leg and that the claimant denied any symptomology in her right lower extremity. He found the claimant's gait and balance to be normal and there is no documentation of any foot or ankle complaints.

The claimant continued treatment with Dr. F who administered chiropractic modalities on a regular basis for the back and neck injuries through July 1999, and thereafter. The progress notes from these visits were offered by the parties, but none contain any entry describing foot or ankle problems until July 19, 1999, except a brief entry on March 17, 1999, that the claimant told Dr. F she had cramping in her toes at night. The claimant was referred by Dr. F on July 21, 1999, to Dr. L, a podiatrist, to address the claimant's complaints of bilateral pain/swelling in her ankles noted in the July 19, 1999, progress note.

The claimant presented to Dr. L on July 21, 1999, and he diagnosed bilateral tarsal tunnel syndrome, internal ankle derangement, sinus tarsi syndrome, and plantar faciitis as well as neuromas, second and third interspaces, bilaterally on the feet. Dr. L noted that the claimant had gained 50 pounds since her injury and, in later visits, documented the weight gain to 65 pounds. MRIs of the left and right ankles were performed on August 5, 1999, and interpreted by Dr. Le as containing multiple abnormalities in the ankles.

The claimant was examined by Dr. G on April 16, 1999; June 16, 1999; and July 14, 1999, and by Dr. K on September 15, 1999, whose notes do not reflect any complaints of foot or ankle pain. At the request of the carrier, the claimant was examined by Dr. C on April 19, 2000, who prepared a report reflecting that the claimant's examination was very difficult due to what he perceived as symptom magnification and interpreted the ankle MRIs as normal.

The claimant offered an undated letter from Dr. Pe who wrote that Dr. F's records reflect that the claimant did not complain about ankle injuries when she was initially seen, but that the claimant began experiencing increasing pain and cramping in her toes and feet shortly after her initial visit. He attributed the objective findings of Dr. L to the trauma the claimant sustained when she fell on _____. It was his opinion that her ankle and foot injuries "were of a delayed onset in nature and are direct [sic] result of her accident."

No explanation as to how or why he believed the ankle and foot injuries to be of a delayed onset in nature was offered in the letter.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

The hearing officer concluded that the claimant did not sustain damage or harm to the physical structure of her feet and ankles on _____, and that the claimant's bilateral foot and ankle problems diagnosed by Dr. L were not results of the _____, injury. When reviewing a hearing officer's decision, we will reverse such a decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge