

APPEAL NO. 001476
FILED AUGUST 10, 2010

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 30, 2000, in _____, Texas, with _____ presiding as hearing officer. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and that she did not have disability. The claimant appealed these determinations on sufficiency grounds. The appeals file does not contain a response from the respondent (carrier).

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not sustain a compensable occupational disease injury. Claimant asserts that her injury was caused by her work activities and that it is compensable. Claimant asks the Appeals Panel to review her testimony.

Claimant testified that, after employer changed from padded carpet to unpadded carpet in her work area, she began to experience foot problems. Claimant said her work involves standing and walking for about seven hours per day. Claimant later underwent surgery to correct her foot problems.

The hearing officer determined that: (1) due to her prolonged standing and walking at work, claimant suffered repetitive trauma to her feet; (2) prolonged standing and walking is an ordinary activity of life to which the general public is exposed; (3) under the facts of this case, claimant's plantar fasciitis and heel spurs constitute an ordinary disease of life; and (4) claimant did not sustain a compensable injury.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Repetitive trauma injuries associated with mere ordinary walking or ordinary standing are generally not compensable. See Texas Workers' Compensation Commission Appeal No. 960307, decided March 25, 1996. The definition of occupational disease does exclude from that definition an "ordinary disease of life to which the general public is exposed outside of employment" Section 401.011(34).

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We have reviewed the hearing officer's determinations and we conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. The hearing officer's legal conclusions are not in error, given the facts of this case.

Claimant asserts that her ombudsman did not adequately represent her. However, an ombudsman does not represent any party and is available to a litigant only to assist in the litigant's own presentation of his or her case. Further, we would note that it does not appear that claimant was not given an adequate opportunity to present testimony and medical evidence in this case. Texas Workers' Compensation Commission Appeal No. 94223, decided April 7, 1994.

Claimant apparently complains that she did not have a preexisting condition, that her employer was aware of the problem, that her weight was not an issue, that her short-term disability payments were not relevant, and that articles from the internet were not discussed. We have reviewed the record and claimant's contentions and we perceive no reversible error. However, in this regard, we would note that this case turned on the fact that claimant's walking and standing was not beyond that the general public is exposed outside of employment and not on evidence about preexisting conditions, private disability insurance payments, awareness of the employer, or claimant's weight. Further, the hearing officer did find that claimant suffered repetitive trauma to her feet due to her prolonged standing and walking at work. However it is not a compensable injury under the 1989 Act.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge