

APPEAL NO. 001521

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 8, 2000. With respect to the single issue before her, the hearing officer determined that the respondent's (claimant) tarsal tunnel syndrome and peroneal neuropathy to the right foot are a direct and natural result of the compensable injury sustained on _____. In its appeal, the appellant (carrier) argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that on the date of the injury, he was working in a warehouse for the employer; that there was a fire and the warehouse was filling with smoke; that he grabbed a fire extinguisher and was running around trying to find the location of the fire; that he attempted to step over a large metal box; that he lost his balance and fell, with his right foot and leg between two metal boxes; and that when he was falling he reached out to try to keep from falling and he knocked loose five or six metal rails, weighing about 25 pounds each, which landed on his right foot. The claimant acknowledged that he is diabetic and that he had four prior foot surgeries about 12 years before the hearing for complications related to a broken second toe on his right foot. The claimant stated that he had a complete recovery following those surgeries and that he has lead a healthy and active life.

On July 24, 1999, the claimant sought medical treatment at an emergency room and was diagnosed with a right little toe sprain. The claimant next sought medical attention on August 16, 1999, with Dr. RP, a podiatrist. In his initial report, Dr. RP diagnosed an impingement neuropathy in the right medial calcaneal nerve and a contusion of the fifth digit on the right foot. Apparently, Dr. RP advised the claimant in late August or early September 1999, that he no longer wanted to serve as the claimant's treating doctor; thus, the claimant submitted a request to change treating doctors with the Texas Workers' Compensation Commission from Dr. RP to Dr. Dr. MP, a chiropractor. In the interim he again sought treatment at the emergency room. In treatment notes from a September 13, 1999, visit, the history of the claimant's injury was listed as his having sustained a "crush injury" to the right foot on _____, and the diagnostic impression is listed as "pain & burning sensation [right] foot."

Dr. MP has diagnosed the claimant with a crush injury to the right foot and right toes, which he attributes to the _____, incident at work. Dr. MP has referred the claimant to Dr. E, who in a September 30, 1999, report diagnosed tendinitis of the peroneus longus and peroneus brevis muscles and tendons in the claimant's right foot and

stated that it was caused by the claimant's _____, work-related injury. Dr. MP also referred the claimant to Dr. L, a podiatrist. Dr. L has diagnosed sinus tarsi syndrome, sural neuritis, peroneal neuritis, internal ankle derangement, and contusion of the fifth digit on the right foot, which Dr. L opined were causally related to the claimant's on-the-job injury. On February 29, 2000, Dr. Y performed EMG and NCV testing on the claimant's right lower extremity, which revealed right tarsal tunnel syndrome and right peroneal neuropathy at the ankle level.

On February 7, 2000, Dr. H, an orthopedic surgeon, examined the claimant at the request of the carrier. In his narrative report of the same date, Dr. H diagnosed that as a result of the _____, incident, the claimant had sustained a "right foot crush injury with neuritis, primarily involving the lateral plantar nerve." However, Dr. H noted that he thought the claimant also had a "double crush syndrome" with compression of the nerves more distally in the foot, along with some borderline tarsal tunnel compression." In his report, Dr. H further opined that the claimant's diabetes mellitus made his nerves "more susceptible to such problems, as a secondary factor."

The carrier also had Dr. M, an orthopedic surgeon, perform a records review. In a report dated March 21, 2000, Dr. M stated that the claimant suffered a contusion to the right fifth toe as a result of the incident at work on _____, which had resolved. Dr. M further stated that "[i]t is my opinion as a Board Certified Orthopedic Surgeon that [claimant's] heel and ankle problems are related to diabetic neuropathy and previous foot surgeries and not the work related incident of _____."

The claimant had the burden to prove that his right tarsal tunnel syndrome and peroneal neuropathy were a direct and natural result of his compensable injury of _____. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier argues that the hearing officer's determination that the claimant's compensable injury extends to right tarsal tunnel syndrome and right peroneal neuropathy is against the great weight of the evidence. As noted above, there was conflicting evidence on that issue. The hearing officer was acting within her province as the fact finder in deciding to resolve that conflict in favor of the claimant. The carrier also argues that the claimant failed to satisfy his burden of proof in this case because the medical evidence he presented in support of his claim did not rise to the level of reasonable medical probability.

After reviewing that evidence, we find no merit in the assertion that it is insufficient as a matter of law. To the contrary, our review reveals that when the substance of the reports of Drs. Y and H is considered, those reports can reasonably be interpreted as establishing a causal connection between the right tarsal tunnel syndrome and right peroneal neuropathy and the claimant's work-related injury. The hearing officer's extent-of-injury determination is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse it on appeal. Pool; Cain. Although another fact finder could have drawn different inferences from the evidence, which would have supported a different result, that does not provide a basis for us to disturb the decision in this case. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Tommy W. Lueders
Appeals Judge