APPEAL NO. 001590

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 June 15, 2000. The hearing officer concluded that the appellant (claimant) did not sustain a compensable injury to her right knee on _____, and that, because she did not sustain a compensable injury, she did not have disability. The claimant appeals, asserting, as she did below, that she tore the meniscus in her right knee while walking in a hurry at work and that she had disability resulting from that injury. The respondent (carrier) urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that on _____ (all dates are in 2000 unless otherwise stated), while working at one of the employer's stores as a customer service representative, she noticed that one of the cashier's lights was on and that as she walked hurriedly across the floor towards that cashier to answer that light call, she felt her right knee "pop." She said that she rubbed her knee and continued walking over to the cashier where she took care of the call and then returned to the podium. She went on to say that her knee became really sore and that the next day she talked to the risk manager and filed a claim. On her handwritten "Associate Statement - Workers Compensation" form dated March 3, the claimant wrote the following in response to the question, "How Were You Injured": "Just walking normally toward GM podium suddenly felt knee pop."

The claimant further stated that she always walks faster at work than her normal walk because the employer stresses a sense of urgency in responding to cashiers' calls. She said that she was walking, not running, across a flat floor when she felt her knee pop; that she did not slip or fall and was not carrying anything; and that she did not know if she twisted her knee at the time. The claimant, who indicated she had not had a prior knee problem, also said that an MRI revealed that she had a torn meniscus. Not appealed is a finding that the claimant has a torn meniscus in her right knee that first manifested itself on _____.

The claimant also testified that she missed work on March 4, 6, and 7; that on March 8, she saw Dr. N, who suspected a torn meniscus and who released her for light duty with restrictions; and that she returned to work on that date and worked until March 13 when she saw Dr. G, who is her current treating doctor. She indicated that Dr. G took her off work on that date and that she has been off work since that time. In Dr. G's April 13 record, he states that the claimant says she was walking fairly rapidly when all of a sudden she felt a pop in the right knee; that she was well before this event; and that "[h]ence [his] contention is that this injury occurred while in the normal course of her duties." However, Dr. G went on to state the following: "I agree that it is an unusual way to get a tear of the meniscus but this is not an impossibility."

The hearing officer found that the claimant did not tear a meniscus in her right knee in the course and scope of her employment on _____. He also found that due to the torn meniscus the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage on March 4, 5, and 6 and beginning on March 14 and continuing through the date of the hearing.

In his discussion concerning course and scope of employment, the hearing officer states that "[t]here is no doubt in this case that Claimant's activity was part of her normal work activity" and that "[s]he was walking quickly, as she always did, when she felt a pop in her right knee." The hearing officer further stated that because "[i]t is not within the common knowledge of hearing officers that walking in a straight line, even if one is in a hurry, can cause a meniscus to tear in a knee . . . medical evidence is needed to tie the injury to the activity." The hearing officer goes on to observe that Dr. G merely stated that walking fairly rapidly is "an unusual way to get a tear of the meniscus but this is not an impossibility" and that without an explanation of the mechanism of injury and an opinion based on reasonable medical probability, the evidence is insufficient to support a finding of compensability.

The claimant had the burden to prove she sustained her right knee injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation , 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). She does not contend that the hearing officer erred in requiring medical evidence of causation in the factual circumstances of this case. Rather, she simply insists that the evidence shows that she injured her knee while quickly walking to assist a cashier. She also cites Texas Workers' Compensation Commission Appeal No. 000074, decided February 25, 2000, in support of her contention.

The majority decision in Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998, reversed as being against the great weight of the evidence a decision that the employee sustained a compensable injury while merely walking down a hall at work and rendered a new decision to the contrary. The majority decision reviewed a number of analogous cases, differentiated ordinary disease cases, and stated the following:

> In the case we consider, there was no evidence of any instrumentality of the workplace involved in claimant's injury nor was there evidence of twisting, turning, or bending or other untoward body motion while claimant was walking down the hall. The evidence showed that claimant was simply walking down the hall when her knee popped and she experienced severe pain. There 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.

The cases relied on by the claimant are distinguishable from Appeal No. 980631. In Texas Workers' Compensation Commission Appeal No. 992193, decided November 17, 1999, the Appeals Panel reversed the hearing officer's decision that the employee did not sustain a compensable injury and rendered a new decision to the contrary. The Appeals Panel in that case noted that in Appeal No. 980631, *supra*, the majority stated that the injury was an "apparently spontaneous, idiopathic kneecap dislocation" and that in Appeal No. 992193, *supra*, the employee was not merely walking but was engaged in climbing the stairs at the time she felt the knee pain. The decision further stated that the great weight of the evidence showed that the employee's injury was not solely caused by a preexisting idiopathic condition, citing Director, State Employees Workers' Comp. Div. v. Bush, 667 S.W.2d 559 (Tex. App, - Dallas 1983, no writ) and Garcia v. Texas Indemnity Insurance Co., 209 S.W.2d 333 (Tex.1948). That decision also observed that "[r]epetitive trauma injuries associated with mere ordinary walking are generally not compensable [citation omitted]" and that "[t]he fact that an injury occurs on the employer's premises does not automatically mean that it is a compensable injury. [Citation omitted.]"

In Texas Workers' Compensation Commission Appeal No. 992748, decided January 21, 2000, the Appeals Panel affirmed the hearing officer's determination that the employee sustained a compensable injury. In that case, the employee testified that she was assisting a patient to a weighing machine when the patient tripped and the employee felt right knee pain when she held the patient up to keep him from falling. The Appeals Panel stated that Appeal No. 980631*, supra*, is distinguishable in that there was no evidence in that case of twisting, turning, or other untoward body motion while the employee was walking down the hall. That decision also noted the decision in Texas Workers' Compensation Commission Appeal No. 990252, decided March 25, 1999, in which the Appeals Panel affirmed the hearing officer's determination that the employee sustained a compensable injury. In that case, the evidence showed that as the employee turned when leaving her workstation to check on patients, her left foot slipped slightly, she "planted" her right foot to maintain her balance, and her knee locked.

In Appeal No. 000074, *supra*, the Appeals Panel reversed the hearing officer's determination that the employee did not sustain a compensable left knee injury and rendered a new decision to the contrary. The employee in that case testified that as she was walking down a hall at work, her foot slipped and her left ankle went inward while her left knee went outward. This case is obviously distinguishable on its facts from the case we consider.

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 (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 the challenged factual determinations 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 decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCURRING OPINION:

I concur on the basis that the hearing officer found that the claimant did not establish that her activity in the course and scope of her employment, whether described as ordinary walking or not, or whether or not it involved some instrumentality of the employer, caused the injury in this case. Thus, the numerous cases cited, including Texas Workers' Compensation Commission Appeal No. 000074, decided February 25, 2000, have essentially no bearing on the outcome.

Alan C. Ernst
Appeals Judge