APPEAL NO. 001721

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 July 11, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury to her left knee on _____, and that she did not have disability.

The claimant appealed, and argued that this decision was against the great weight and preponderance of the evidence. The respondent (self-insured) responded that the decision is fully supported by the record and the circumstances of the claimant's episode of pain.

DECISION

We affirm the hearing officer's decision.

The claimant had been employed as an assistant cook for a middle school operated by the self-insured since 1986. The date of the asserted injury was _____. Although the claim related to a specific incident, testimony was elicited concerning the claimant's duties in general which involved lifting boxes of groceries when they were delivered and cleaning the freezer and extractor on occasion.

According to the claimant, on the day of the incident in question the freezer had broken down and had to be unloaded. The claimant contended that she used her knee more than usual. However, this sequence of events was not mentioned when her statement was taken by the adjuster. The claimant's explanation for this was that no one had asked her about what she was doing that day.

The claimant said that after lunch (eaten around 10:00 a.m.), she was walking and had just turned a corner and gone a few steps when her left knee "popped." Nothing extraordinary was happening at the time. Statements from coworkers who were walking with claimant when she felt the pop said that nothing unusual had gone on that day. She was taken to Dr. P. Medical records in evidence were sparse. Dr. P wrote on May 5, 2000, that the claimant "probably" twisted her knee. Dr. P stated his understanding that she had been climbing up and down stairs a lot that day. The claimant had seen other doctors but there were no records presented.

An MRI done on March 3, 2000, showed degenerative changes of the meniscus but with no tear. The claimant also had moderate degenerative joint disease. The claimant said that she had not been working due to doctor's orders until June 1, 2000, but went off work again after that time.

We would agree that the workday should not be broken down into a minute-by-minute scrutiny of whether the precise activity being undertaken when injury occurs was, or was not, specifically directed by the employer. Nor do we endorse the concept that walking in the employer's hallway during a break could never be said to be furthering the affairs of the employer. However, the coincidental or idiopathic eruption at work of an underlying medical or degenerative condition, unrelated to any instrumentality or accidental occurrence, has been previously held not to "arise" out of employment for purposes of workers' compensation. *See* Employers' Casualty Company v. Bratcher, 823 S.W.2d 719 (Tex. App.-El Paso 1992, writ denied). We accordingly affirm the hearing officer's decision that there was no compensable injury.

As far as the hearing officer's determination that there was no "injury" proven, we would note that there is considerable conflicting testimony and the claimant's subsequent inability to walk is certainly probative of a physical injury. We do not agree that a diagnosis was required to be proven. However, the hearing officer could believe that this was a flare-up, not necessarily an enhancement, of an ongoing degenerative condition.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCURRING OPINION:

I concur in the result. I write separately to state that in my view this case is affirmable based upon the precedent in Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998, and Texas Workers' Compensation Commission Appeal No. 001590, decided August 24, 2000. I view these cases as more pertinent to the facts of this case than those in Employers' Casualty Company v. Bratcher, 823 S.W.2d 719 (Tex. App.-El Paso 1992, writ denied).

Philip F. O'Neill
Appeals Judge