

APPEAL NO. 001841

This appeal is brought 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 15, 2000. The hearing officer kept the record open to an unspecified date and determined that the respondent (claimant) sustained a compensable deep vein thrombosis (DVT) condition resulting from an injury she sustained on _____, and that she had disability beginning on December 8, 1999, and continuing through December 21, 1999. The appellant (carrier) requested review; contended that the hearing officer erred in admitting a report from Dr. H, in refusing to submit certain questions to Dr. H in the carrier's request for deposition on written questions, and in refusing to admit the boot the claimant was wearing at the time of the injury; urged that the claimant failed to prove with reasonable medical probability that she sustained a compensable DVT injury on _____, as opposed to the consequences of an infected dog scratch and that the determination on the extent of the claimant's injury is so against the great weight and preponderance of the evidence as to be manifestly unjust; argued that since the claimant's compensable injury did not include DVT, she did not have disability; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor on each issue. In the alternative, the carrier requested that the Appeals Panel reverse the decision of the hearing officer and remand to the hearing officer so that he may examine and cross-examine Dr. H on the issue of whether the claimant's injury extends to DVT. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We reverse and remand.

We first address the carrier's contention that the hearing officer erred in not admitting a rubber boot like the one worn by the claimant at the time that she was struck by a piece of metal. The hearing officer stated that he would not admit the boot into evidence, that the boot was examined by him and the parties, and that a photograph and a description of the boot could be entered into the record. The hearing officer and the attorney representing the carrier made statements describing the boot. The record contains a photograph. The hearing officer should have done as is often done in trials in court and admitted the boot into evidence and then permitted the photograph and description of the boot to be substituted for the boot in the record of the hearing. The practical effect of how the hearing officer handled the offering of the boot into evidence is that the boot was admitted into evidence. He did not commit reversible error.

We next address the hearing officer's keeping the record open to receive the letter from Dr. H dated May 4, 2000. The benefit review conference (BRC) was held on March 29, 2000, and the BRC report was transmitted to the parties with a letter dated April 11, 2000, advising that the CCH was scheduled for May 15, 2000. At the CCH, the attorney representing the claimant stated that the claimant spoke with Dr. H, trying to get a report

from him. He also said that on April 12, 2000, he, the attorney, faxed a letter to Dr. H; advised Dr. H of the upcoming CCH; told him that Dr. S had characterized the claimant's condition as an ordinary disease of life and not the result of her work-related injury; and requested that Dr. H provide a short statement about whether he agreed or disagreed with Dr. S's conclusions and the medical indications that supported Dr. H's position. The attorney stated that after a response was not received within two weeks, the claimant contacted Dr. H's office; that they learned that the fax was sent to a general fax number rather than to Dr. H's personal fax number; that Dr. H is in his office only two days a week; and that historically it is difficult to get a response from Dr. H. The carrier stated that Dr. S's report was exchanged with the claimant well before the CCH and objected to keeping the record open to receive a report from Dr. H.

Evidentiary rulings by a hearing officer on documents which are admitted or not admitted are generally viewed as being discretionary on the part of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94816, decided August 10, 1994. The standard of review on such evidentiary questions is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 93580, decided August 26, 1993. In determining whether there was an abuse of discretion, the Appeals Panel looks to see if the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The Appeals Panel has stated that the hearing officer should look at diligence in obtaining a document in addition to timely exchanging it after it is received. Texas Workers' Compensation Commission Appeal No. 001812, decided September 13, 2000. It would have been preferable for the hearing officer to have stated that he found good cause to keep the record open to receive the report if it was received in seven days and to have stated the basis for finding good cause. However, the record does not reveal that the hearing officer erred in keeping the record open and admitting the letter from Dr. H dated May 4, 2000.

We next address the carrier's contention that the hearing officer erred in not submitting to Dr. H eight of the thirteen questions it requested be submitted to Dr. H. The claimant testified that on _____, a piece of metal fell and struck her right leg; that she did not see the piece fall; that other employees who saw the piece fall and maintenance personnel of the employer told her that the piece is about three feet long and weighs about 30 pounds and that it hit the floor, bounced, and struck her; that the piece slid down her leg and landed on her ankle; that her ankle was very swollen; that she went to the employer's nurse; and that ice was placed on her ankle. The claimant said that she had a scratch on her leg that is not related to the injury; that the scratch became infected; that she went to Dr. MR, her regular doctor; and that Dr. MR placed her on antibiotics. A report from Dr. MR dated October 14, 1999, is consistent with her testimony concerning the scratch. An affidavit from Ms. LR, the employer's nurse, states that she saw the claimant on _____; that there was no laceration on the claimant's right ankle as a result of a piece of metal that fell to the floor and bounced back, hitting the claimant's ankle; that the claimant was treated with ice; and that during the examination of the claimant she noticed a stasis ulcer on the anterior side of the claimant's right leg; and that the ulcer was not related to the claimant's injury.

A hospital discharge summary from Dr. H indicates that the claimant was admitted on December 8, 1999, and discharged on December 10, 1999; that the discharge diagnosis is DVT; that a couple of weeks ago the claimant had a heavy object fall on her leg at work; that since that time, she had significant swelling; that after the soft-tissue swelling of her injury resolved, she had persistent swelling in her calf and foot and developed ulceration in her tibial area; that a venous sonogram showed nonocclusive probable acute DVT; that given her history, the DVT is certainly posttraumatic from her work injury; that she was admitted for anticoagulation; and that she was dismissed, will take medication, and will be monitored. In the letter dated May 4, 2000, Dr. H wrote:

This is a note in behalf of [claimant] regarding her treatment for [DVT] of the right lower extremity. I first saw [claimant] in December 1999. At that time the patient gave me a history of having swelling in her right leg after an accident which had occurred at work several weeks prior to this. The exam was consistent with venous insufficiency and a duplex sonogram was performed which demonstrated [DVT] in the right lower extremity. This was appropriately treated with blood thinners and compression stockings. I was asked to render an opinion as to whether or not this injury occurred as a result of work. My impression is that DVT is common in the general population, but in younger patients such as [claimant] it is most commonly associated with an identifiable event such as an injury. It is exceedingly common to have post traumatic DVT after blunt trauma to the lower extremity.

At the request of the carrier, Dr. S reviewed unspecified records of the claimant. In a letter dated March 13, 2000, Dr. S wrote that a piece of metal hit the right outside of the claimant's ankle; that there was no record indicating that the claimant received any laceration, contusion, or required any treatment at all for that condition; that records of Dr. MR show that he has treated the claimant since the 1980s for numerous diagnoses, including a diagnosis of deep right femoral vein thrombophlebitis and hypertension; that DVT is an ordinary disease of life; and that the claimant's DVT was a preexisting condition and not a result of the _____, injury. Reports of Dr. MR reveal the claimant was hospitalized for hypertension in February 1989 and that since May 1989 the hypertension has been adequately controlled. Dr. MR's records also indicate that in 1989 he began treating the claimant for a kidney problem, that in January 1990 she had some swelling and pain in her right leg, that in February 1990 she had no swelling in the right leg and was post thrombophlebitis in the right leg, and that in August 1991 she was post thrombophlebitis in the right leg with the condition totally resolved.

The carrier had admitted into evidence a document about DVT. It includes:

Venous thrombosis may be caused by any of several factors. It may result from damage to the wall of a vein caused by injury, infection, or some form of autoimmune disorder, in which the body reacts against itself, causing venous inflammation. Sometimes, thrombosis may develop because of a

combination of an increase in the clotting factors within the blood and slowing of the normal blood circulation.

Review of information from Dr. H indicates that he may have been under the impression that the ulcer on the claimant's leg resulted from the injury sustained on _____. The hearing officer did not submit all questions proposed by the carrier to further develop the evidence in that area. The hearing officer's refusal to do so was error. We reverse the decision of the hearing officer and remand for additional information to be obtained from Dr. H and for the hearing officer to resolve the issues of whether the claimant's DVT naturally resulted from the _____, injury and whether she had disability. It appears that a prehearing conference to develop questions to be submitted to Dr. H may be appropriate so that additional information from Dr. H needed to resolve the disputed issues may be obtained prior to convening the CCH on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge