APPEAL NO. 002009

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 July 27, 2000. The issues at the CCH were whether the _____, compensable injury sustained by the respondent, who is the claimant, extended to her left calf and thrombosis, and whether she had disability from her compensable injury for the period from December 2, 1999, through July 4, 2000.

The hearing officer found in favor of the claimant's position on both issues. The appellant (carrier) has appealed, arguing that the expert medical evidence does not credibly support a connection between the claimant's _____, injury and her thrombophlebitis. The carrier asserts that because the claimant could not work due to this condition, and it was not related, she did not have disability as defined by the 1989 Act. The claimant responds by reciting and summarizing the evidence in favor of the hearing officer's decision, pointing out contradictions in the expert medical opinion of the carrier's doctor.

DECISION

We affirm the hearing officer's decision.

The hearing officer has fairly summarized the evidence, which we will briefly summarize here. The claimant testified that she twisted her left foot, which caused two small fractures, on November 29, 1999. This did not happen at work but behind her car in a parking lot. She began to use crutches and a walking boot for the foot, which did not cover her calf. On _____, while she was at work during the late afternoon, she fell while on her at the "fax" machine. This occurred after an emotionally upsetting conversation at work apparently relating to a personnel matter. The carrier did not dispute the compensability of cervical, lumbar, and right calf injuries from this incident. The claimant said that when she fell, she held up her left leg.

The claimant saw Dr. T the next morning. She said that Dr. T's report of that date was inaccurate. For example, she denied that she fell on November 29 as he stated. She also took issue with his recitation of the history of the December 1 injury. The claimant said she began to develop considerable pain in her left calf by December 3 and, after unsuccessfully trying to contact Dr. T's office, the claimant went in to Dr. T's office without an appointment in hopes of being seen. She was not, and thereafter took action to change her doctor to Dr. F.

At his examination on December 9, 1999, Dr. F diagnosed a pulled tendon in the calf. On December 29 the claimant sought treatment from Dr. F for a continued extremely swollen and painful calf. He ordered a venous Doppler test. This showed that she had a large clot and should go into the hospital that night. The claimant was hospitalized for 22 days. Dr. F also called in Dr. A, a cardiovascular specialist, and the claimant was also

treated by Dr. Z. The claimant said that all of these doctors felt that the trauma of her fall caused the thrombophlebitis. This is supported by the reports in the record. Dr. F additionally stated on May 22, 2000, that he had never seen thrombophlebitis develop from a foot fracture such as the claimant had.

The claimant also pointed out that this was the opinion of Dr. B, a doctor for the carrier, after the first and only time she saw him. The claimant said that Dr. B told her he had all her records from Dr. T. The claimant offered evidence that Dr. B's opinion changed after contact from the carrier following his original supportive opinion, rather than in reaction to the receipt of additional significant medical information.

Dr. F took the claimant off work effective December 2, 1999. Dr. F also took the claimant off work December 16 due to her low back strain as well as her left calf injury. Although her blood clot problems were a major factor in her inability to return to work after her hospitalization; we note that Dr. F took the claimant off work on February 14, 2000, for lumbar and cervical pain as well.

At the time of the CCH, the claimant had returned to work on July 5, 2000, for another employer. She said that she was offered that job in March and April but was unable to return due to her blood clots.

Dr. B testified by telephone as the carrier's doctor. He said he was not an expert on blood conditions but, as a neurosurgeon, had treated some patients (dozens over the years) for injury-related thrombophlebitis. Dr. B said that immobilization was the most common cause of the development of this condition. He explained away his former opinion that the claimant's thrombophlebitis was related to her December 1 injury as being based on incomplete information, and that he changed his opinion when the carrier furnished additional medical records. Dr. B said that if the claimant's December 1 fall caused thrombophlebitis, she should have developed the condition a few days to a week after that fall. He agreed that trauma could cause phlebitis.

Dr. B asserted that when he examined the claimant on February 15, 2000, she was able to work. He qualified this opinion as being based on his assessment of her from a neurological standpoint. It appears from Dr. B's April 18, 2000, report and his testimony that he was under the impression that the claimant's thrombophlebitis did not develop for three weeks after her injury, although this is more accurately when it was diagnosed. Although Dr. B characterizes the passage of this time as an indication against a causal relationship, in the same letter he attributes the development of the clot to the even-earlier fracture of the foot.

The definition of injury in the 1989 Act includes not only damage or harm to the physical body, but a disease or infection naturally resulting from such damage or harm. Section 401.011(26). Whether a condition qualifies as part of the compensable injury is a matter of fact for the hearing officer. We agree that expert medical evidence is required to prove the connection between an injury and development of thrombophlebitis. In this

case, there was such evidence. A carrier that wishes to assert that a preexisting condition is the sole cause of an incapacity has the burden of proving this. Texas Employers Insurance Association v. Page, 553 S.W.2d 98, 100 (Tex. 1977); Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1992. In this case, the carrier asserted that approximately two days of "immobilization" preceding the claimant's _____, fall was the reason that the claimant developed her blood clots. The hearing officer evidently considered that this opinion came from Dr. B who, by his own admission was not a specialist in blood conditions; who originally opined that there was a relationship between the thrombophlebitis and the December 1 injury; and who changed his opinion following additional contacts from the carrier after his favorable opinion. The hearing officer obviously credited the opinions of Dr. F and Dr. Z above that of Dr. B, as she was entitled to do as the sole judge of the weight and credibility of the evidence.

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 is the case here for either the injury or disability issues, and affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge