APPEAL NO. 011089
FILED JUNE 26, 2001

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 May 2, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury, in the form of an occupational disease, with a date of injury of _____, and that the claimant had disability from _____, through the date of the CCH. The appellant (carrier) has appealed the determinations on sufficiency of the evidence grounds. The claimant has responded to the appeal and urges that the hearing officer's determinations should be affirmed.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury, in the form of an occupational disease, on _____. The claimant had the burden to prove that she sustained damage or harm to the physical structure of her body, in the form of an occupational disease, arising out of and in the course and scope of her employment. *See* Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer determined that the claimant was a credible witness, and that there was medical evidence from which the hearing officer could determine that the claimant's allegations were sufficiently corroborated. The claimant's evidence included testimony that she stood or walked for virtually 100% of a 12 to 16-hour workday, on concrete, with over 85% of that time involved with very rapid-paced walking, with little or no opportunity to sit down even to eat. The hearing officer stated in his statement of the evidence that this is well beyond what the general public would experience in everyday life or even in a general employment setting. He specifically cited Texas Workers' Compensation Commission Appeal No. 000661, decided May 15, 2000, as upholding a decision in favor of a claimant, on facts which were similar but "not even as pronounced as those in this case." 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 including the medical 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 findings 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 it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In view of our decision above, the hearing officer did not err in determining that the claimant had disability from June 16, 2000, through the date of the hearing.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

CONCURRING OPINION:

I concur but write separately to emphasize the "general rule that ordinary standing and walking on the job does not qualify as a compensable injury, even where there may be an underlying disposition which would render the employee more susceptible to complications from the standing and walking. Appeal No. 951630, [decided November 15, 1995]." Texas Workers' Compensation Commission Appeal No. 980352, decided April 6, 1998. The Appeals Panel has affirmed decisions holding that an employee's plantar fasciitis was not proven to be causally related to the employment (*see, e.g.*, Texas Workers' Compensation Commission Appeal No. 93390, decided July 2, 1993; Texas Workers' Compensation Commission Appeal No. 972145, decided December 4, 1997; and Texas Workers' Compensation Commission Appeal No. 982305, decided November 6, 1998), and has affirmed decisions holding that the plantar fasciitis was compensable, (*see, e.g.*, Appeal No. 980352, *supra)*. The Appeals Panel has required expert evidence to establish causation in these types of cases. Appeal No. 93390, *supra*.

In the case we now consider, I view the medical evidence as minimally sufficient to support an affirmance. Of the four doctors who saw the claimant, only two even commented on causation and those two, Dr. G and Dr. D, simply stated that walking on concrete floors during 12-hour shifts led to the claimant's foot pain. It has to be recognized that the claimant, who worked four days per week, was presumably walking elsewhere during the other three days of the week and that untold millions of employees daily walk on

concrete in the course of their workday. Finding that sore feet from walking is not an ordinary disease of life but rather a compensable injury should be a rare occurrence.

Philip F. O'Neill
Appeals Judge