

APPEAL NO. 011167
FILED JUNE 29, 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. With regard to the issues, the hearing officer determined that the appellant (claimant) had not sustained an occupational disease injury on _____, and that the claimant did not have disability. The claimant appeals both findings on the basis that the evidence was in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a pipe fitter by a construction company. The claimant was required to wear leather, steel-toed work boots or shoes with a "defined heel." The claimant bought a new pair of boots, which apparently wore blisters on his feet. On _____, the claimant was at work wearing his new boots when it was raining very hard. The claimant continued to work in the rain "wading around in water" for about three hours. The blisters on the claimant's feet became infected and the claimant was subsequently admitted to a hospital with a diagnosis of "venous insufficiency, stasis ulcer and cellulitis." The claimant alleges that working in standing water on _____ aggravated a preexisting venous insufficiency.

The medical evidence of causation is conflicting. Dr. G, the claimant's treating doctor, in response to several questions sent to him by a benefit review officer, was of the opinion that while venous insufficiency was not caused by the claimant's work, it was "exacerbated" and "aggravated" by the claimant's work environment. Dr. M, the carrier's peer review doctor, who testified at the CCH, was of the opinion that working in wet boots for three hours did not aggravate the claimant's venous insufficiency or cause the ulcers. Dr. M testified that the cellulitis was not caused by wading in water on _____.

The hearing officer applied the positional risk test, citing Employers' Casualty Company v. Bratcher, 823 S.W.2d 719 (Tex. App.-El Paso, 1992, writ denied), in concluding that the blisters on the claimant's feet were not a condition that arose out of his employment. The hearing officer went on to comment that "[w]orking or being outside in the rain is a risk to which much of the public is exposed." We disagree with the hearing officer's rationale that this case is a Bratcher-type situation (the inevitability of the injury occurring). The purpose of the positional risk test in Bratcher is to ensure that there is some connection between the work and the risk of injury. Texas Workers' Compensation Commission Appeal No. 001413, decided August 1, 2000. Nor can we agree that working outside for three hours in a rainstorm, standing in muddy water, "is a risk to which much of the public is exposed." Also, whether the claimant was required to buy/wear the boots he was wearing and how he got the blisters is relatively immaterial. The question to be answered is whether working in the rain for three hours on _____ aggravated the

claimant's venous insufficiency and/or caused the claimant's blisters to become infected, resulting in the ulcers.

The medical evidence on those questions is conflicting. The hearing officer made a fact finding (Finding of Fact No. 2) that the claimant did not sustain an injury (harm to the physical structure of his body) on _____, while in the course and scope of his employment. With the pertinent evidence on that point in conflict, we will uphold the hearing officer's decision on any theory reasonably supported by the evidence. See Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied). We find sufficient evidence to support the hearing officer's finding of fact and conclusion that the claimant had not sustained a compensable injury on _____.

In that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge