

APPEAL NO. 011925
FILED OCTOBER 4, 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 was held on July 24, 2001. The hearing officer held that the respondent (claimant) sustained a compensable injury on _____, an which resulted in aggravation of her preexisting congenital hip condition.

The appellant (carrier) argues that the hearing officer committed reversible error by admitting five statements that had not been timely exchanged. The carrier argues that these statements could have and should have been created well before the deadline for exchange. Finally, the carrier argues that the evidence does not rise to the required level of reasonable medical probability of causation. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

While at work on _____, the claimant's chair rolled backwards and she fell to the floor. She said that she fell again when her coworkers attempted to help her rise. Thereafter, she developed pain in her right hip. It was determined during objective testing that she had a congenital condition, of an abnormality of the hip socket. The claimant testified that she had previously had no hip problems and was unaware of any such condition. She said that her treating doctor told her that because of this, the fall from her chair affected her more adversely than it would had if she did not had the condition. The claimant also presented medical-opinion evidence that the hip condition was probably aggravated by her fall.

ADMISSION OF EVIDENCE OVER OBJECTION

The hearing officer did not err in admitting witness statements created after the 15-day period following the benefit review conference (BRC). Section 410.160(3) requires any witness statement to be exchanged within "the time prescribed by commission [Texas Workers' Compensation Commission] rule." Failure of a party to disclose documents in the party's "possession, custody, or control" at the time disclosure is required may not introduce the evidence in a subsequent proceeding unless good cause is shown. Section 410.161. In light of Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 142.13(c)(2) (Rule 142.13(c)(2)), which allows exchange of information as it becomes available, if not exchanged within the 15-day period after the BRC, we cannot say that the hearing officer abused her discretion by admitting witness statements that were "faxed" to the carrier the day after they were notarized. The same is true of an additional medical record created after the usual disclosure time limit.

This is not to say that a hearing officer should not consider whether delayed

production is intentionally delayed to circumvent exchange requirements. However, the hearing officer in this case inquired into the circumstances surrounding such production and disclosure to the carrier before making her ruling. We would further note that the statements from family members of the claimant that they had no knowledge of the claimant's congenital condition essentially parallels the claimant's testimony and admission of such duplicative evidence would not constitute reversible error.

COMPENSABLE INJURY

The hearing officer did not err in finding that the claimant sustained a compensable injury. We do not agree, under the facts of this case, that medical evidence rising to the level of reasonable medical probability was required. Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984). The claimant fell from her chair; this incident was followed by considerable pain and the need for medical treatment.

It is axiomatic, in case law having to do with aggravation, that the employer accepts the employee as he is when he enters employment. Gill v. Transamerica Insurance Company, 417 S.W.2d 720, 723 (Tex. Civ. App.-Dallas 1967, no writ). An injury by aggravation is not restricted only to a worsening of a preexisting injury; an incident may also cause injury due to a preexisting infirmity where no injury might result in a sound employee. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). The compensable injury includes these enhanced effects and, unless a first condition is one for which compensation is payable under the 1989 Act, a subsequent carrier's liability is not reduced by reason of the prior condition. St. Paul Fire & Marine Insurance Company v. Murphree, 357 S.W.2d 744 (Tex. 1962). We have reviewed the record and find that the decision is supported sufficiently by the evidence and is not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. See Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Accordingly, we affirm.

The true corporate name of the insurance carrier is **AMERICAN AND FOREIGN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge