APPEAL NO. 012249
FILED NOVEMBER 13, 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 August 31, 2001. She determined that the respondent's (claimant) _____, compensable foot injury caused a chronic tear to the peroneus brevis tendon in her left foot. The appellant (self-insured), appealed this decision, arguing that there is no sufficient expert medical evidence to support this, and further arguing that a finding of the hearing officer "attempts to circumvent" the Medical Review Division. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

We find no error in the decision of the hearing officer, which is sufficiently supported by the testimonial and medical evidence in this case. The claimant worked as a teacher's aide for special needs children. On _____, one irrate student tossed a classroom desk into the air; when it came down, one leg hit the claimant on her left foot and then slid off to the side. The claimant said that the student's weight also pressed into the desk in the course of this. This was on a Friday; the claimant went to the emergency room. Her pain was reported as radiating from the top of her foot up her leg. She said they made no diagnosis but urged her to seek consultation by an orthopedic doctor, which she did the following Monday. An initial impression of contusion and foot (ligament) sprain was recorded at the emergency room. The claimant was put on crutches and given pain medication. However, the medical records indicate a continued discussion over what was the source of claimant's continuing pain. The claimant said she was in a foot-to-knee cast several times due in part to instability in the ankle area.

In September, the claimant was seen by a second opinion doctor, Dr. S, who upon examination found that the claimant had swelling and pronounced tenderness in her ankle and in the lateral area around it, notably the peroneal tendon sheath. He assessed "atypical" continued foot and ankle pain. Dr. S expressed concern about possible reflex sympathetic dystrophy. He recommended an MRI, which was reported as showing edema in the "peroneus longes tendon consistent with tiny linear tears or tendinitis." (We observe that the tendon (the peroneus brevis) in question runs along the outside and slanting to near the bottom of the foot from the ankle into the mid-foot area, while the longus tendon runs more frankly across the mid-foot area).

The claimant said that while injections were considered, eventually she was prescribed a galvanic stimulator. The claimant moved to another state in January 1999 then to a third state in May; she did not seek medical treatment again until September 1999. Her explanation was that she had first been told that she should expect that relief would take several months. She also noted that while in the first state, she found that

boots had a stabilizing effect on her foot. The claimant emphatically denied that she was involved in skiing or rollerblading, and that allusions to such activities in the reports of her treating doctor in the other state, Dr. C, represent a misunderstanding of what she was trying to tell him about what sort of shoe helped to brace her ankle.

Dr. C pursued the source of the claimant's continued pain and ordered another MRI; after comparison of the two MRIs, he recommended surgery. Dr. C said that it was unclear how a blunt trauma could cause the peroneal tendon problems unless there was also at that time a severe twisting. The claimant's surgery, which she said was approved and paid for by the self-insured, led to infection which led to subsequent debridement surgeries.

Dr. C was asked to respond to contentions of the carrier that the claimant could not have engaged in vigorous physical activity if she had an ongoing injury. He did not agree with this and said that with a stabilizing device supporting the ankle she could have continued to be active. Dr. C said that the tear he operated on was a chronic one that gradually developed over time, and was not a single episode tear; he opined that it initially occurred during the _____ episode and worsened over time.

The records do not indicate that the claimant had any required medical examination by a doctor for the carrier (although this may have been Dr. S's status). The carrier presented one written peer review report and then live testimony from two other peer review doctors, none of whom had examined the claimant. Dr. T, whose board specialties are in otolaryngology and plastic surgery, speculated that there had been an intervening injury. It was brought out in cross-examination that Dr. T had not treated an injury such as that experienced by the claimant. In Dr. T's July 2001 report, he characterized the _____ MRI report as showing no abnormalities in the mid-foot or tears of the peroneal tendon, although a tear to a peroneas tendon is indicated.

Dr. R, who is an orthopedic surgeon, also speculated that the tear seen in the peroneus brevis was consistent with a specific injury. He said that such tears were seen in connection with chronic or severe ankle sprains. However, Dr. R agreed in cross examination that development of such a tendon tear could be gradual, that it could have been present at the time of the first MRI and just not detected, and then developed in connection with normal activities.

We would caution that while chronology alone does not establish a causal connection between an accident and a later-diagnosed injury (Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994), neither does a delayed manifestation nor the failure to immediately mention an injury to a health care provider necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). Likewise, we cannot accept one of the carrier's basic assumptions underlying its dispute of the case: that the emergency room diagnosis in some respect fixed the nature of the injury thereafter. The body of medical evidence in this case leaves the impression that the diagnosis of the claimant's continuing foot problems was evolving.

The carrier's argument that medical evidence was required to prove the relationship of the peroneus brevis tendon to the injury is likewise based on its assumption that the claimant's left foot involved only a contusion to the top of the foot. The claimant made clear, however, that her foot and ankle area were painful, were swollen, and were unstable after this injury. Medical records bear this out. Some of the hearing officer's questions indicated that she believed from common experience that the weight of a desk and student coming down on the claimant's foot caused a reactive motion on her part in response. While we believe the causal connection in this case did not necessarily require expert medical evidence, we would also observe that Dr. C's statement explaining why he believed there was such a connection would provide such evidence.

We find that the hearing officer's findings and conclusions have sufficient support in the record and are in any case not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We disagree likewise with the carrier's assertion that any of the findings made by the hearing officer intrude into the jurisdiction of medical review. The hearing officer has merely found a sequence of facts supported by the record, none of which intrude into the scope of inquiry performed by medical review. Most of the records and much of the testimony showing the sequence of events following the claimant's surgery came into the record without objection.

We affirm the hearing officer's decision and order.

The true corporate name of the self-insured/insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
ADDRESS
CITY, TEXAS ZIP CODE.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge