

APPEAL NO. 020045
FILED FEBRUARY 25, 2002

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 December 10, 2001. With respect to the issues before him, the hearing officer resolved that the respondent (claimant) sustained a compensable injury to his right foot on _____, and that, as a result, he had disability from _____ through December 10, 2001. The appellant (self-insured) appealed and the claimant responded.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that he had disability therefrom from _____ until December 10, 2001. The parties did not dispute the pertinent facts of the _____, incident during which the claimant, a police officer, broke his right foot while participating in a traffic stop. At the time of the injury, the claimant testified that he had been standing on an incline and was beginning to walk. At issue was whether the injury sustained was not compensable because, the self-insured argued, it was idiopathic, or the result of an everyday occurrence not particular to or arising from the claimant's job duties. The self-insured based its argument in part on its contention that the claimant was not in motion and in part on the claimant's preexisting diabetes. The hearing officer also discussed that although the claimant's diabetes might predispose him to injury, this predisposition did not render the injury an ordinary disease of life. An incident may indeed cause injury where there is preexisting infirmity where no injury might result in an otherwise physically sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). However, the compensable injury includes these enhanced effects.

The hearing officer determined that at the time of the incident, the claimant was performing his usual duties as a police officer and thus furthering the interests of his employer and within the course and scope of his employment. The hearing officer further determined that the claimant had disability as a result of his compensable injury from _____ through December 10, 2001. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and legal precedent and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001996, decided October 5, 2000; Texas Workers' Compensation Commission Appeal No. 001002, decided June 22, 2000; and Texas Workers' Compensation Commission Appeal No. 991312, decided August 5, 1999.

The hearing officer's decision and order are affirmed.

The true name of the certified self-insured is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MAYOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Terri Kay Oliver
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge