APPEAL NO. 020781
FILED MAY 2, 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 March 5, 2002. The hearing officer determined that the respondent's (claimant) compensable injury included his diagnosed rheumatoid arthritis (RA).

The appellant (carrier) appeals, contending that the medical evidence does not support the hearing officer's determination based on a standard of reasonable degree of medical probability. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant, a 64-year-old beverage machine serviceman, sustained a compensable injury on _____, when he slipped and fell to a concrete floor. Whether the claimant hit both hands and knees or only his knees is disputed but the hearing officer commented that the claimant landed "on his hands and knees." Shortly after his fall, the claimant's hands, wrists, and knees began swelling and he was eventually diagnosed with RA.

The claimant saw a number of doctors. The hearing officer's Statement of the Evidence discusses the standard that she used and contains a summary of the reports of six of the doctors (which includes a chiropractic designated doctor who assessed a 35% impairment rating) and clarifications from two of those doctors. The hearing officer concluded:

> While none of the doctors are willing, or able, to state that the [RA] was caused by the compensable injury, the majority of them, including the only one with expertise in the field, state that RA can activate, precipitate or exacerbate the existing disease. [Dr. S] opinion is sufficient, although he does not use the "magic words" - reasonable medical probability, to show that Claimant's compensable injury accelerated the presentation of his [RA]. The facts are clear that Claimant had no symptoms of RA prior to the date of the injury and developed said symptoms almost immediately after the occurrence of the compensable injury.

There were obviously conflicting interpretations that could have been made from the medical evidence. The hearing officer weighed the credibility of the evidence and resolved the issue in the claimant's favor. We are unable to say that the hearing officer applied either the wrong standard or that her determination on the disputed issue before her was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

CONCURRING OPINION:

I concur only because of our standard of review, in which we have removed the Appeals Panel from second-guessing fact findings of a hearing officer that have even slim support in the evidence (as is the case here). It is clear to me that if the doctors here, whose opinions been have interpreted by this hearing officer as probative of "aggravation," were subjected to cross-examination, it would become readily apparent that the relationship between the compensable injury and the experience of symptoms from this auto-immune ordinary disease of life is temporal only, and that the experience of symptoms from the underlying disease did not constitute an actual worsening of the physical condition.

Because the coverage of ordinary diseases of life "incident" to a compensable injury is essentially an exception to their exclusion from being considered occupational diseases (Section 401.011(34)), I believe the term "incident" is to be narrowly construed. The carrier here poses a very valid question as to whether workers' compensation coverage should be turned into substitute health insurance for every ordinary disease that is merely present in an injured worker, and for which a speculative opinion as to "aggravation" or "exacerbation" could be submitted. If the etiology of

rheumatoid arthritis is unknown, and the experts in this case make that point rather emphatically, I fail to understand how the etiology of a purported “worsening” could be ascertainable.

Susan M. Kelley
Appeals Judge