APPEAL NO. 022064
FILED SEPTEMBER 26, 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 (CCH) was held on July 23, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable low back injury on _____; that the claimant had disability from _____ through July 19, 2001, and from March 4 through March 24, 2002; and that the claimant was entitled to change treating doctors to Dr. P, a chiropractor, pursuant to Section 408.022.

The appellant (carrier) appealed all the issues, contending that the hearing officer erred as a matter of law in finding a compensable injury, that the claimant did not have disability, and that the claimant should not have been allowed to change treating doctors. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was employed as an insurance customer service representative. The claimant testified, and it is relatively undisputed, that he was standing by his desk and reached or bent over to write a note, when he heard a pop in his low back, had immediate severe pain, and was unable to move. The carrier, both at the CCH and on appeal, argues that Texas Workers' Compensation Commission Appeal No. 972235, decided December 17, 1997, is controlling. In that case a secretary "attempted to stand up out of her chair, and felt excruciating back pain." The hearing officer in that case found for the claimant and the appeals panel reversed stating:

> Standing up without more, from sitting in a chair is the type of activity that is a normal occurrence without regard to the work situation and has nothing to do with furthering the business of the employer.

We distinguish that case on the specific facts. In the instant case the claimant was in a standing position and leaned or "bent over" to write a note on the desk. That is not a simple standing or sitting activity. As the hearing officer noted leaning "over to reach a piece of paper to write a work note, . . . is **not** an ordinary activity of life." (Emphasis in the original). We distinguish Appeal No. 972235 on that basis and hold that the hearing officer did not err on the application of the law in his determination.

The carrier appeals the disability determination on the basis that the claimant had not sustained a work related injury, therefore, by definition, he could not have disability. Because we are affirming the hearing officer's determination of a compensable injury we also affirm the determination on disability.

The carrier asserts that the claimant did not have "an adequate reason" to change treating doctors. Section 408.022 provides that an injured worker may request a change of treating doctor if he is dissatisfied with the initial choice of doctor. Section 408.022 gives examples when the change is, and is not, appropriate. In this case the claimant's initial choice was a doctor at a medical care clinic (clinic). The claimant testified, and documentation supports, that he was seen by several different doctors at the clinic at various visits. Employee's Request to Change Treating Doctors (TWCC-53) gives as the reason for the claimant's request:

> I need a different type of treatment . . . . I always see a different doctor at [clinic]. I feel [illegible] medical care from the same doctor on a Regular Basis.

The hearing officer inferentially found that the Texas Workers' Compensation Commission had not abused its discretion in approving the claimant's request to change treating doctors. The hearing officer's determinations on this issue is supported by the evidence and 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, 176 (Tex. 1986).

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain, *supra*. Accordingly, the hearing officer's decision and order are affirmed.

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

PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Margaret L. Turner
Appeals Judge

CONCURRING OPINION

I concur. When a worker is injured during the workday and in the course of performing a work-related (or personal comfort) activity, I do not believe that workers' compensation law supports not extending coverage when the injurious activity parallels a function performed outside the workplace. Texas Workers Compensation Commission Appeal No. 952057, decided January 16, 1996; Texas Workers Compensation Commission Appeal No. 000074, decided February 25, 2000.

_____
Susan M. Kelley
Appeals Judge