

APPEAL NO. 030667  
FILED APRIL 10, 2003

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 February 5, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the claimant is not barred from pursuing workers' compensation benefits by taking an election of remedies; and that the claimant did not have disability. The hearing officer's determination on the election-of-remedies issue has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the injury and disability issues, contending that there was "only one ganglion cyst" and that his excessive "stop-and-go driving" while wearing boots required by the respondent (self-insured) caused his ganglion cyst and that he had disability. The self-insured responds, urging affirmance and suggesting that the claimant's appeal was not timely.

DECISION

Affirmed.

The claimant's appeal is timely. The carrier apparently did not consider the provisions of Section 410.202(d) for appeals filed after June 17, 2001.

The claimant, a deputy sheriff for the self-insured, contends that the mandated boots he was required to wear and "excessive" driving a patrol car caused a ganglion cyst on his right ankle. The hearing officer's discussion and findings refer to "two ganglion cysts" and to "cysts." The claimant, in his appeal, alleges that there was "only one ganglion cyst." Our review of the record indicates that there was generally a reference to a ganglion cyst, however, one of the medical reports from Dr. B does seem to indicate two ganglion cysts on the right ankle. Any error in referring to two ganglion cysts is harmless and does not require reversal. We would also note that while the hearing officer's decision does not indicate any witnesses testified, in fact the claimant and two other witnesses did testify.

Even the claimant concedes that there is minimal medical evidence of causation. One of the medical reports in the complaint portion recites "the development of painful mass on the Rt. ankle anterior aspect secondary to the boots rubbing on this area constantly" and on a form marks "yes" that the injury arises out of the employment, stating "continuous rubbing from working boots." The claimant also relies on a pamphlet from the doctor's office, which in part states: "People who wear boots are more vulnerable to ganglions as this type of footwear puts stress on the foot and ankle." The hearing officer commented that the claimant failed to prove "start-and-stop" driving "while wearing the required footwear place Claimant at greater risk of developing

ganglion cysts of the ankle than the general public.” The hearing officer also determined that the previously referenced doctor’s report “did not explain the manner in which exterior irritation of the skin probably caused, to a degree of reasonable medical probability, two [sic a] ganglion cysts in the right ankle.”

The claimant had the burden of prove that he sustained a compensable repetitive trauma injury as defined by Section 401.011(36) and that he has had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer applied the correct legal standard. We conclude that the hearing officer’s decision is supported by sufficient 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).

We affirm the decision and order of the hearing officer.

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

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

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Chris Cowan  
Appeals Judge