APPEAL NO. 950333

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001, *et seq.* (1989 Act). On January 24, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not show that he was compensably injured, did not give adequate notice, and does not have disability; he did find that a claim was timely filed. Claimant asserts that a medical report from (Dr. D) is evidence of injury and this report dated (date), was provided to the school where he taught, which claimant states gave notice of his injury. He adds that he does have disability and that two documents he offered were not admitted into evidence. Respondent (school) replied denying assertions made by claimant.

DECISION

We affirm.

Claimant began work for school in August 1993, with his first duties involving coaching, and later, when the school term began, claimant began teaching several periods daily in the areas of history and English. He was a "floating teacher" in that he did not have a home room and would move to another room to teach with each period of the day. He did not have to climb stairs to another floor - the school was on one level. The school did have wings and claimant had to walk up to 30 to 40 yards to reach another room. He also stated that he had to park his car a significant distance from the building. As claimant moved from room to room he had to carry his books and teaching material which weighed approximately 15 pounds; in the latter months that he taught, he had a cart he could pull for carrying his teaching supplies. Claimant identified himself on the record as being six feet two inches tall and weighing 380 pounds.

Claimant has congenital problems with his feet and had injured his knees while working previously for another school. His testimony was that his knee, leg, and foot conditions were made significantly worse by having to walk between periods to a different room at the school several times a day. He acknowledged that each room in which he taught had a chair for him on which he was able to sit (although he indicated that he had been told he should move around the room to observe students as they worked at their desks).

A letter from Dr. D merely chronicled claimant's problems identified as "chronic" and "congenital." Nothing in Dr. D's letter ties his current condition to his work, although Dr. D does say, "[h]e has been working full duty with great difficulty due to bilateral knee and foot pain and leg swelling," and later advises claimant, "considering all of his problems, he probably should try to obtain employment that does not require standing and walking." Dr. D never describes any particular type of walking, the frequency of walking, the duration of walking or how, if applicable, any activity at school caused or aggravated the "bilateral knee and foot pain and leg swelling."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The letter of Dr. D, just described, was the only communication that claimant said gave notice of his injury. With no other communication within 30 days of injury, the hearing officer could reasonably read that letter as not conveying notice of injury caused or aggravated by the work. Merely describing a medical condition does not serve as notice of injury at work. *See* DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980).

With no description of walking or standing that was required to be conducted in a manner out of the ordinary, claimant did not offer enough evidence to show a compensable injury from walking or standing. *See* Texas Workers' Compensation Commission Appeal No. 93390, decided July 2, 1993, which cited Texas Workers' Compensation Commission Appeal No. 92220, decided July 13, 1992, for the general proposition that an occupational disease, which includes repetitive physical trauma, does not include an ordinary disease of life to which others are exposed, unless such disease is incident to the compensable injury. It also quoted from Appeal No. 92220, as follows: "to recover for a repetitive trauma injury, one must not only prove that repetitious physical traumatic activities occurred on the job, but also prove that a causal link existed between the activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally." There was no evidence, much less medical evidence, that walking approximately 30 to 40 yards approximately once every hour for approximately 10 times a day compared unfavorably to the amount of walking in "employment generally."

Claimant states on appeal that two of his exhibits were not admitted when all of carrier's were admitted. Claimant did not object to carrier's exhibits. One of claimant's exhibits was excluded because it was not timely exchanged. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13). This exclusion was proper. Claimant's other submission was excluded at the hearing as a statement that was not signed; the hearing officer then indicated to claimant that if he obtained a signature for the statement it would be admitted after the hearing. Claimant did get the signature, but the hearing officer noted on the submission that it was not admitted apparently for lack of relevance. With the statements made at the hearing regarding admission by the hearing officer, it should have been admitted. However, the document only said claimant had thrombo phlebitis in 1995 without any further information, so had it been admitted, it would not have affected the decision. Since the case did not turn on whether this document was admitted or not, there is no reversible error. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The evidence sufficiently supported the determination that claimant did not show that he sustained a compensable injury. Without a compensable injury, there can be no disability under the 1989 Act. *See* Section 401.011 (16). The decision and order are sufficiently supported by the evidence and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge