APPEAL NO. 980307
FILED APRIL 3, 1998

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 January 27, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With regard to the issues at the CCH, she determined that the respondent's (claimant) _____, compensable left foot injury extends to his right foot. The appellant (carrier) appeals, seeks a reversal of the decision and argues that the claimant's right foot injury was caused by his use of crutches. The claimant does not respond.

DECISION

We affirm.

The parties stipulated that on _____, the claimant was employed as a nurse at (employer) hospital and sustained a compensable left foot injury while running to assist a patient. On March 25, 1997, the claimant's treating doctor, Dr. C, performed a left foot plantar fascia release surgery. The postoperative treatment included the use of crutches. On April 7, 1997, Dr. C stated the claimant "had a resurgent [sic] of right foot pain," was "not surprised considering that he has to rely on his right foot for everything at this point postoperatively." On July 17, 1997, Dr. C stated that the claimant's right heel pain related to his work. On October 17, 1997, doctor Dr. C referred him to Dr. WE, who wrote that "[t]he right foot became worse approximately two weeks after the surgery on his left foot which, in my opinion, is due to compensation from his nonweightbearing [sic] status on his left foot." On November 11, 1997, the Texas Workers' Compensation Commission-selected designated doctor, Dr. WA, stated that he tore his right heel two weeks after his left foot surgery but "[i]t does not appear that this occurred at work," and certified him at maximum medical improvement (MMI) with a one percent impairment (IR) rating. On May 15, 1997, an occupational medicine specialist, Dr. P, certified that he reached MMI with a two percent IR, with regard to the left foot only.

An injury is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). An injury extends to a particular body part if the injury to that body part is naturally resulting from the compensable injury. The issue of the extent of an injury is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92653, decided January 21, 1993; Texas Workers' Compensation Commission Appeal No. 92654, decided January 22, 1993.

The carrier argues that the claimant's right foot injury is not compensable because he bore the same weight on his right leg while using crutches as he did without them. It maintains that each of a person's legs bear his full weight on each step and the same concept holds true when the person uses crutches, but does not offer expert

opinion regarding this medical theory. We reversed a hearing officer's decision that an injury to an employee's right knee injury did not extend to his left knee where his left knee was injured from using crutches, and rendered that the left knee injury was compensable. Texas Workers' Compensation Commission Appeal No. 951822, decided December 18, 1995. We also affirmed hearing officers' decisions that found compensable injuries to one lower extremity extended to the other lower extremity by way of using crutches. Texas Workers' Compensation Commission Appeal No. 960496, decided April 24, 1996; Texas Workers' Compensation Commission Appeal No. 960701, decided May 20, 1996. We hold that the mode of injury to the claimant's right foot injury is analogous to those cases. The evidence in the record supports the claimant's theory at the CCH that extra weight on his right foot caused it to be injured. We distinguish the facts of the case where we reversed a hearing officer's decision that an employee's compensable right knee injury extended to his left knee when the left knee injury resulted from a fall while the employee was on crutches. Texas Workers' Compensation Commission Appeal No. 951402, decided October 5, 1995.

The contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will not substitute our judgment for that of the hearing officer when the determination 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We conclude that the determination herein is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and, therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge