

APPEAL NO. 031115  
FILED JULY 22, 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 (CCH) was held on May 7, 2003. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; and (2) the claimant had disability from August 28 to August 30, 2002, and at no other time as of the date of the CCH. The appellant (carrier) appealed these determinations on sufficiency of the evidence grounds. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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 carrier contends that "The Claimant's complaints amount to nothing more than complaints of pain" which is not compensable under the 1989 Act. While we have said that pain alone is not an injury, those cases involved a lack of objective evidence of damage or harm to the physical structure of the body. See Texas Workers' Compensation Commission Appeal No. 92058, decided March 26, 1992; and compare National Union Fire Insurance Company of Pittsburgh v. Janes, 687 S.W.2d 822 (Tex. App.-El Paso 1985, writ ref'd n.r.e.) (where court held that pain accompanied by swelling and medical evidence of aggravation would support a finding of injury under the statute). Here, the medical evidence shows that the claimant experienced tenderness, swelling and diminished range of motion in the right ankle and foot. Accordingly, we perceive no error.

The carrier also argues that "merely standing from a sitting position" cannot, as a matter of law, give rise to a compensable injury. See Texas Workers' Compensation Commission Appeal No. 972235, decided December 17, 1997. We note that the facts in this case are distinguishable from Appeal No. 972235, in that the claimant's right foot became entangled on a footrest beneath her desk causing her to twist her right ankle and foot. We further note that in Texas Workers' Compensation Commission Appeal No. 990252, decided March 25, 1999, the continuing viability of Appeal No. 972235 was called into question.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Robert W. Potts  
Appeals Judge