APPEAL NO. 92423

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). On July 14, 1992, a contested case hearing was held in (city), Texas, (hearing officer) presiding, to consider the sole disputed issue, namely, whether respondent's work-related injuries of (date of injury), extended to and affected his right knee. The parties stipulated that respondent's left knee, left elbow, and neck were injured on the job on (date of injury), and that he had been receiving temporary income benefits (TIBS) since on or about May 9, 1991. The hearing officer determined that on (date of injury) respondent did sustain an injury to his right knee, in addition to his undisputed injuries, when he was thrown against a wall while operating an air hammer at work for his employer. Appellant challenges the sufficiency of the evidence to support the pertinent factual finding and legal conclusion underlying the hearing officer's decision. Appellant further complains of the manner in which the hearing officer appeared to treat the testimony of one of the doctors in the discussion of the evidence, and of his finding respondent's testimony to be credible. Respondent urges our affirmance.

DECISION

Finding no error and the evidence sufficient to support the hearing officer's findings and conclusions, we affirm.

Respondent testified that on (date of injury), he was operating an air hammer breaking up a concrete entryway. The air hammer bit suddenly stuck in some rebar within the concrete and the jackhammer spun around between his knees, striking them and throwing him into a wall where he struck his left elbow and apparently fell forward onto his knees. He first visited his family doctor, (Dr. Ba), about two weeks later, at which time he had a large bruise on his left knee but only a small dime-sized bruise on his right knee. He filled out an information form at (Dr. Ba's) office where he was told to list his main sources of pain and it was indicated his other problems would be dealt with later. Accordingly, he did not then include his right knee among his other body parts injured. He testified that his Employee's Notice of Injury or Occupational Disease and Claim for Compensation form, signed on May 20, 1991, did not include his right knee for the same reason. He signed an amended form on November 27, 1991 to include his right knee. About one month after first seeing (Dr. Ba), respondent's right knee began to bother him more with swelling and pain, and a knot on that knee, about the size of a Hershey's candy kiss after the injury, grew to about the size of a half dollar coin. Respondent insisted he told all the doctors about his right knee being injured in addition to his left elbow and left knee, but said the doctors were concentrating on his left knee which was operated on for a left medial meniscus tear on September 11, 1991. He denied any post-injury trauma to that knee.

The surgeon's records of his September 10th examination referenced not only the left meniscus tear, but also other possible injuries to respondent's left elbow and right knee. (Dr. Ba) referred respondent to (Dr. S), a joint specialist, for his left knee. (Dr. S's) records of an August 22nd visit stated that "[r]ecently, he has noted some right knee symptoms."

(Dr. S) found the left knee to be the most symptomatic at the time and suspected a left meniscus tear. He advised respondent "to proceed with medical treatment of his knees as indicated," and referred respondent to (Dr. D) who operated on the left knee on September 11th. (Dr. D's) records reflect that during an office visit on September 30th respondent continued "to complain of some degree of discomfort in his right knee," and reflected that respondent had been to see (Dr. B) at his insurance company's request for both his left elbow and his right knee. (Dr. B's) records of respondent's September 23rd visit indicate that after examining respondent, (Dr. B) apparently decided to get involved in his treatment. His examination of respondent's right knee revealed tenderness on varus stress and on range of motion, and a distinct pop along the medial joint line. (Dr. B) wanted an MRI scan of the right knee but, according to his records, the insurance company would not approve the MRI because the right knee problem was not clearly related to respondent's work injury. (Dr. B's) records stated: "[i]n my mind, it is very clearly related to his work injury, as he describes the incident." Appellant complains that the hearing officer, in summarizing the evidence, erred by claiming that (Dr. B) was the carrier's requested physician and by apparently placing greater weight on (Dr. B's) reports. In fact, the hearing officer merely stated that respondent had been seen by (Dr. B) at the apparent request of the insurance carrier. Respondent testified that he had agreed with appellant to see (Dr. B) for another examination. It is clear the hearing officer did not unfairly characterize the manner by which respondent became involved with (Dr. B), and the weight to be given (Dr. B's) reports was up to the hearing officer.

Appellant argued that the case turned on respondent's credibility and adduced from respondent testimony that he had two felony convictions for unauthorized use of a motor vehicle. Appellant also introduced a videotape which ostensibly showed respondent entering and leaving (Dr. B's) office on September 23rd. The point of the videotape evidence was to show that respondent's left knee, exposed in cutoff jeans, had some dark spot or substance on it which could have evidenced some more recent trauma. There was no evidence as to what, in fact, the apparent spot or substance was.

We are satisfied the evidence is sufficient to support the challenged finding and conclusion to the effect that respondent's (date of injury) work injury extended to and affected his right knee. Article 8308-6.34(e) vests in the hearing officer the sole responsibility for judging the weight of the evidence and the credibility it is to be given. As the trier of fact, it was for the hearing officer to resolve any conflicts and inconsistencies in the evidence, including the absence of mention of right knee symptoms in some of the medical records. Garza v. Commercial Ins. Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App. -Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of any one witness including the claimant, and may give credence to testimony even where there are some discrepancies. We are satisfied there was sufficient evidence from which the hearing officer could find that respondent's right knee injury was a part of his (date of injury) work accident. *See* Texas Workers' Compensation Commission Appeal No. 92069 (Docket No. redacted) decided April 1, 1992. We may not substitute our judgment for that of the hearing officer where, as here, there is sufficient evidence to

support the findings. Texas Employers Insurance Assn. v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.- Texarkana 1989, no writ). The findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Finding no reversible error and sufficient evidence to support the findings and conclusions, the hearing officer's decision is affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Susan M. Kelley
Appeals Judge