

APPEALS PANEL NO. 94003

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On June 10, August 19, and October 12, 1993, a contested case hearing was held. [The hearing officer] determined that appellant (claimant) gave timely notice of injury to his left knee on (date of injury), but did not suffer a compensable injury in (date of injury). Claimant asserts that he notified a supervisor of injury to his left and right knee and his back, that the supervisor is not credible, that his injury was misdiagnosed and errors were made in medical reports, that certain findings of fact are wrong, and that the evidence supports his claim. Respondent (city) replies that credibility was a significant aspect of this case and asks that the hearing officer be upheld.

DECISION

We affirm.

Claimant worked for the city as a police officer at an airport. While responding to an alert on (date of injury), claimant testified that he fell and hurt both knees and his back. When he arrived at the scene, he apologized to the supervisor there, (supervisor), for being delayed and reported that he had fallen and hurt both knees and his back, he said.

Prior to this time, claimant had been injured on the job in (year); that injury was primarily to his left knee, but included the right knee. After the (year) injury, claimant had surgery and apparently some exacerbations of the injury. He had just returned to work on June 25, 1991. The last of (number) weeks of paid time from the city, provided for the (year) on-the-job injury, had been used by claimant in May 1991. (The parties agreed that the (number) weeks provided by the city did not have to be used consecutively.)

Supervisor testified that he saw claimant during part of claimant's response to the alert; he saw claimant walking, not running. Supervisor said that claimant told him nothing about any fall, and he did not see claimant limping. He testified further that claimant told him that while responding to this alarm, he felt a sharp pain in his left leg.

In a statement claimant gave on March 12, 1992, reference was made to returning to work on (date of injury), and that "about a week later I started having problems with the left knee." He added that because of prolonged standing and running, "I injured the right knee. I started having severe pain in the right knee and then severe pain in the back." Later in that same statement, claimant said, "[t]he first time I was starting to have problems I was running to an alarm call at the airport and I got a severe pain in the left knee and then a severe pain in the right knee and . . . I couldn't even walk"

Medical records contain no reference to a fall. Claimant's Exhibit 1 shows that (Dr. L) saw him on July 17, 1991. Dr. L records a date of injury of (year) and noted, "continued pain and, according to the patient, effusion, nonwitnessed, left knee." Dr. L took claimant off work and said he would do an MRI. The MRI was negative as to abnormality, and Dr. L

released claimant to return to work on July 29, 1991. Claimant thereafter saw (Dr. W), whose reports will be discussed in the next paragraph. Dr. L, on March 10, 1992, then stated:

I recently saw [claimant] for evaluation of a continuing problem associated with his left knee, which was the original injured and then a referred transfer lesion of the right knee injury. The right knee has been progressive and evolutionary over the last year or so while I have been following him for his left knee injury. He has additionally had some problems with his back that has resulted in a disc bulge but no frank herniation that requires surgery. [Dr. W] astutely recognized the existence of continuing problems with this gentleman's knee

Dr. W first saw claimant on August 14, 1991, for his left knee. On September 6, 1991, Dr. W. reported that claimant had been injured in an auto/pedestrian accident in (year), causing injury to both knees and his lumbar and thoracic spine. Dr. W also noted at this time that claimant was doing light duty and in the process of filing aggravated the left knee and lumbar spine. He did interpret recent MRI's to indicate some changes, which he said should be checked further. Dr. W saw claimant at least seven more times through February 1992 before he indicated that claimant may have been injured on (date of injury) for the first time. Dr. W operated on claimant's right knee in May 1993 for traumatic arthritis and a torn cartilage. Dr. L, in June 1993, then writes that the left knee showed no abnormality on July 24, 1991, when the MRI was done, but "[i]t would therefore appear that the injuries to the right knee and back were sustained or at least exacerbated in there (sic) condition as a result of an injury in [(year of subsequent injury)]."

Claimant had also seen (Dr. Y) on September 19, 1991, in referral to evaluate the left knee and lower back. Dr. Y also referred to the (year) accident. No reference to a fall in (month) was made although Dr. Y does refer to a "table collapsed on him" in June.

Claimant's assertion that he reported injury to his back and both knees was contradicted by his supervisor, who claimant says is not credible. Claimant also testified that his injuries came from a fall. The supervisor stated that no fall was mentioned and that claimant only said his left knee started hurting as he was responding. Supervisor's statement is consistent with the statement that claimant, himself, gave in March 1992 when no mention of a fall was made; claimant did at that time mention his right knee though. No doctor's statement mentions a fall or even ties injury to a (date of injury) time frame until Dr. W's report of July 1992. No doctor in claimant's initial visit after (date of injury), reported any right knee problem. (Dr. W did refer subsequently to chondromalacia in both knees. Dorland's Illustrated Medical Dictionary, Twenty-sixth Edition says that chondromalacia means softening of cartilage.) The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could resolve conflicts in the evidence as to whether claimant mentioned a fall by believing supervisor, particularly when

claimant's own pre-hearing statement mentioned no fall. See Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo (year), writ denied).

Medical reports in regard to claimant did change somewhat over a period of time. These reports had indicated that some injury to the right knee occurred in (year); Dr. L in March 1992 acknowledged that the right knee had a problem but described it as "progressive and evolutionary." Dr. W, a year after the reported injury, (date of injury), as a date of injury and operated on that knee in 1993. The hearing officer may give more weight to one medical report or to one doctor's reports as opposed to another doctor's reports. See Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.).

The findings of fact are sufficiently supported by the evidence. The finding that claimant only reported pain in the left knee to his supervisor is supported by the supervisor's statement and is consistent with the first reports of each doctor seen by the claimant. (The record contained no other report of injury within 30 days, and no evidence of good cause for delay was offered.) While the record indicates some condition with the right knee that required surgery, the length of time prior to identifying the need for surgery together with the medical evidence that the condition could have been progressive support the finding that no injury to the right knee occurred at work on (date of injury). The hearing officer could view the MRI taken in late (month)(year) as indicating no damage to the left knee, according to Dr. L, even though Dr. W indicated that he interpreted it as showing some damage.

As stated, there is some evidence in support of claimant's assertion that his right knee was injured - at some time. With the supervisor's steadfast testimony that claimant made no reference to the right knee and with no doctor's initial report indicating a problem with the right knee, there is little evidence that injury to the right knee occurred on (date of injury). Indeed, the statement of Dr. L can be interpreted to mean that the right knee's condition did not result from injury on any particular day. Even though there is some evidence to support some of claimant's position, the standard for review is whether the determinations of the fact finder are against the great weight and preponderance of the evidence. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The record does not show that the hearing officer's findings of fact and conclusions of law were against the great weight and preponderance of the evidence. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge