

APPEAL NO. 94080

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On December 6, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that claimant did not compensably injure her left knee when she fell at home on (date of injury), subsequent to her compensable injury to her back on (date of injury), and right knee in (month year). Disability was found from (date of injury), to the date of hearing with temporary income benefits (TIBS) reduced because of wages earned in the periods December 7, 1992, to February 15, 1993, and from May 17, 1993, to the date of the hearing. Appellant (claimant) only asserts on appeal that she is "entitled to a higher percentage of disability" and asks for an opinion by a different physician. Respondent (carrier) replies that disability was determined at the hearing by stipulation and asks that the decision be affirmed.

DECISION

We affirm.

Claimant worked for (employer) when she hurt her back on (date of injury). While at physical therapy for the injury to her back, she was exercising on a "stairmaster" when she felt a "pop" in her right knee. Both the back and right knee were treated as compensable injuries. Thereafter claimant testified that while walking up steps at her home, her "right knee gave out." She fell and hurt her left knee. An Initial Medical Report from Dr. H indicates that he saw claimant on (date of injury), for an injury to her left knee that day; he relates the history of injury as "right knee gave out and twisted left knee." Claimant does not appeal the determination that the injury to the left knee at home was not compensable, so that determination of the hearing officer will not be addressed.

There was no issue as to either maximum medical improvement (MMI) or impairment rating at the hearing. The only issues were whether claimant has disability and whether the injury of (date of injury), extends to an injury to her left knee. In regard to the issue of disability, the parties at the hearing stipulated that claimant was off work from (date of injury), to December 7, 1992; claimant returned to work part time from December 7, 1992, to February 15, 1993; that claimant was off work from February 15, 1993, to May 17, 1993; and claimant returned to work part time from May 17, 1993, to the date of the hearing. They also stipulated as to the average weekly wage (AWW) and to the number of hours per week worked when working part time and the rate of pay for those hours. Each stipulation was specifically agreed to by the claimant herself. After these stipulations, there was no further testimony or argument about the issue of disability.

With no appeal as to any period of disability, claimant's appeal as to "percentage of disability" could be interpreted as attacking the reduction of TIBS due based on wages earned during a period of time or as misinterpretation of disability as compared to MMI and impairment rating which, as stated, were not issues and were not decided at this hearing. The reduction of TIBS is provided for in Section 408.103(a)(1) which provides for payment of 70% of the amount of the AWW after subtracting weekly earnings after the injury. The

decision and order of the hearing officer are consistent with the stipulations entered into in regard to periods during which claimant worked part time and accurately reflect the criteria found in Section 408.103(a)(1). There is no assertion that the stipulations entered into about disability should not be considered. The decision and order in regard to disability are sufficiently supported by the evidence and are affirmed.

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge