

APPEAL NO. 980221
FILED MARCH 20, 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 14, 1998. With respect to the two issues before him in this case (this case was heard simultaneously with a companion case involving a different injury and date of injury), the hearing officer determined that appellant (claimant) had not sustained a compensable (repetitive trauma) injury to her knees and that the date of the claimed injury "was the middle of (month) (year)" pursuant to Section 408.007.

Claimant appealed, citing certain medical reports which she believes supports her position that driving a bus and prolonged sitting in a flexed knee position "exacerbated the underlying osteoarthritis." Claimant also contends that she did not know her knee problem was related to her work until shortly before she saw a doctor for this condition. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier), in its response, generally urges affirmance on the compensability issue and "joins the Claimant in her appeal" on the date of injury. Carrier's pleading is timely as a response, but is not timely as an appeal. Carrier's argument, in its response, on the date of injury issue, will not be considered as an appeal. Similarly, carrier's argument on the hearing officer's refusal to add an issue was not timely made as an appeal of that ruling and will not be considered. The hearing officer's ruling on carrier's request to add an issue, not having been timely appealed has become final, Section 410.169, and will not be addressed further.

DECISION

Affirmed.

Claimant testified that she is a shuttle bus driver (for a university), having various routes throughout the city and drives various numbers of hours. (Basically claimant testified to about a 40-hour week while the employer's documentation shows about half that much). Claimant testified that her knees began to hurt in September 1996 and that she suspected her knee complaints were work related when the condition improved during a December (1996) vacation period, and then worsened again when she returned to work in mid-January (1997). Claimant went to (clinic) on February 3, 1997, with complaints of "knee pain (bilateral) for several months." The health care provider (whose signature is illegible) noted that claimant is "5'4"" tall and weighs "247 ½#," that the knee pain was probably due to weight and "encouraged weight loss." Claimant returned to the clinic on February 17, 1997, with complaints of "chronic knee pain (both) X 5 mo.; difficulty walking." (Dr. F), at the clinic, referred claimant to (Dr. N) in an Initial Medical Report (TWCC-61) of the office visit of February 17, 1997. The TWCC-61 noted a date of injury of "2-14-97" with a diagnosis of degenerative joint disease. Dr. N's handwritten office note lists a complaint of bilateral knee pain for five months and that claimant's "right knee hurts when driving." An

x-ray was taken and it appears that Dr. N diagnosed degenerative meniscal disease in both knees. Claimant was apparently a "[n]o [s]how" for an April 2, 1997, appointment. Claimant requested a change of treating doctor from Dr. N to (Dr. H) on an Employee's Request to Change Treating Doctors (TWCC-53) dated April 4, 1997. On the TWCC-53, the date of injury was listed as a "[g]radual chronic pain approx (month 2) (year)" The request for change of treating doctor was denied.

Claimant nonetheless saw Dr. H, who in a report of a visit of March 25, 1997, noted "onset of bilateral anterior knee pain in approximately September 1996, without real distinct evidence of injury." Dr. H noted the pain is worse climbing and descending stairs and commented:

When she took time off at Christmas from the bus driving, she was able to notice some relief of her pain, even while she was not on medication. There has been some question about whether or not her symptoms are related to her work. She describes her work as mainly seated, although she does have to ascend and descend steps 3-4 times a day and the pain is worse when she descends steps.

Dr. H, at that time, diagnosed "[p]atellofemoral arthralgia, probably secondary to the stress of prolonged knee flexion and quadriceps deconditioning." In subsequent reports of April 17, 1997, and September 16, 1997, offered and relied upon by claimant, Dr. H diagnosed "[b]ilateral knee patellofemoral arthralgia with medial tibiofemoral arthritis, mild" and stated the condition is exacerbated by prolonged sitting with the knee in a flexed position, doing knee extension type exercises . . . I believe that her pain is worsened by work done in a prolonged seated position and hyperflexed knee position. I believe that these are evidence that the symptoms that she presented to me with on 3/25/97 do relate to her work as a bus driver" Dr. H concludes:

I do believe that her case deserves consideration as a work-related exacerbation of a pre-existing condition.

The hearing officer notes the difference in tone between Dr. H's March 25, 1997, report and the subsequent statements asserting aggravation of a preexisting condition and comments "but such statements are not convincing." Carrier offered a brief peer review report from (Dr. R), who opined that claimant's bilateral knee pain and degenerative knee disease is not work related.

The hearing officer determined that claimant's pain is due to degenerative knee disease which is not work related and that claimant knew or should have known that her alleged knee injury was related to her work in the middle of January when her knee condition got worse after experiencing some relief when she was not driving during the Christmas vacation. Claimant's appeal stresses Dr. H's reports of April 17th and September 16, 1997, while omitting any mention of Dr. H's earlier March 25, 1997, report. On the issue of the compensability of the knee condition the evidence is in conflict with

earlier reports of Dr. F, Dr. N, and the March 25, 1997, report of Dr. H all indicating a degenerative knee disease which is affected by a number of factors including claimant's weight, stair climbing, etc., and Dr. H's later reports which attribute exacerbation of the knee condition to claimant's work-related driving. Whether claimant's knee condition is causally related to, or exacerbated by her work-related duties of driving a bus are fact questions to be resolved by the hearing officer. As the fact finder, the hearing officer is charged with the responsibility for resolving the conflicts and inconsistencies in the evidence, including medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer could believe all, part, or none of the testimony of the claimant and could properly decide what weight he would assign to the other evidence before him. Campos. While issues of injury may frequently be established by the testimony of the claimant alone, the hearing officer may accept or reject such testimony in whole or in part (Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.)). Further, it is well settled that the hearing officer is not bound to accept the claimant's testimony at face value; rather, it only raises an issue of fact for a hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In this case, the hearing officer's determinations on compensability of the knee condition are supported by the evidence.

On the issue of the date of injury, the hearing officer's determination of a date of injury, being the date that claimant knew or should have known that her alleged occupational disease may be work related (Section 408.007), is supported by claimant's own testimony (and as she related to Dr. H) that she experienced relief from her knee pain in December 1996, during a vacation period when she was not driving at all, or on a lighter schedule, and that the knee pain worsened when she resumed driving her regular schedule. Further, claimant failed to explain her contention of a (date of injury), date of injury or how (date of injury) was the day she knew her knee pain was work related. She had seen a doctor on February 3, 1997, who said her knee pain was due to her weight and then on February 17, 1997, (Dr. F) diagnosed degenerative joint disease and referred claimant to Dr. N. There is no explanation of the (date of injury), date noted on Dr. F's TWCC-61. We find the hearing officer's determinations on this issue also supported by the evidence.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge