

APPEAL NO. 990012

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 7, 1998. On the single issue before her, the hearing officer determined that the respondent's (claimant) compensable right knee injury of _____, extended to the lumbar spine and left shoulder. The appellant (carrier) appeals, urging that the supporting finding of fact and conclusion of law are against the great weight and preponderance of the credible evidence. The claimant urges that there is sufficient evidence to support the factual finding and conclusion of law by the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable right knee injury on _____. There was also evidence that the claimant had a back injury in 1985, had surgery, and appeared to completely recover. The issue in the case before us was whether the 1996 knee injury extended to the lumbar spine and shoulder, symptoms of which did not manifest themselves until later. The claimant was taken to a hospital after a high pressure gun caused him to fall and caused an injury to his knee. He underwent surgery for his knee and initial medical records do not indicate back or shoulder pain or injury. He continued to experience problems and receive treatment for his knee and was prescribed crutches at the hospital. Claimant testified that while he subsequently had pain in his shoulder and back he thought it would go away and did not mention it until he was referred to an orthopedist. A report of the orthopedist in December 1996 reflects complaints of pain going up into the hip and down to the foot and popping in the left shoulder, and recommended an MRI. His treating doctor in a February 1997 report, and in subsequent reports, diagnosed a lumbar strain and myofascitis of the left shoulder which he states developed since the last visit and which he notes the claimant stated that since the original injury he felt pain to the shoulder but was more concerned about the knee injury. Diagnostic tests were not performed because of carrier denial. The orthopedic surgeon who examined the claimant stated in a report that "[s]ince the patient was on crutches for a long period of time because of his knee, this has aggravated his back condition from a previous back surgery."

While there may have been some inconsistency about the circumstances surrounding the incident on _____, and the mechanics of the injury sustained by the claimant, these were matters for the hearing officer to resolve in arriving at her findings. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It is apparent the hearing officer found the claimant to be credible in his testimony concerning the incident of _____, his treatment and the follow-on manifestations of symptoms in his shoulder and back over the course of the next several months. Although diagnostic tests were apparently refused, there is medical evidence in support of the claimant's testimony and which relates the shoulder and back to the incident

in September 1996. The claimant testified about the ongoing need to use crutches following the surgery on his knee and his continued knee problems. Medical evidence supports a shoulder and back injury, with the medical opinion expressed by the orthopedist that the use of the crutches in the treatment of the knee injury aggravated the back condition from the surgery 11 years earlier. The extension of an injury can be caused by subsequent treatment or such things as altered gait resulting in compensability. Texas Workers' Compensation Commission Appeal No. 982046, decided October 5, 1998; Texas Workers' Compensation Commission Appeal No. 960654, decided May 16, 1996, and cases cited therein. With the evidence in this posture, we cannot conclude that the hearing officer's determination of the factual issue of the extent of the claimant's injury, is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge