

## APPEAL NO. 990327

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 17, 1998, a contested case hearing (CCH) was held. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable \_\_\_\_\_ (all dates are 1998 unless otherwise stated), injury to her right knee and leg was also a producing cause of injuries to claimant's right hip, lower back, right elbow and left ankle, but was not a producing cause to claimed injuries to the left leg, left knee, wrists, head, neck, shoulders, arms and psychological problems. The hearing officer found claimant had disability from February 9th through February 15th and from March 25th through March 29th, but did not have disability after June 30th.

Appellant (carrier) appealed the findings that the compensable injury extended beyond the right knee and leg, and that claimant had any disability. Carrier cites testimony and medical evidence that support its position, notes that the hearing officer omitted any mention of its witness and contends that its witness and evidence "is a great deal more credible than the testimony of Claimant." Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from the claimant.

### DECISION

Affirmed.

Claimant was employed by (employer) and was assigned to assist a client company on a sales promotion on a temporary basis. On \_\_\_\_\_ claimant was accompanying the client sales representative, Ms. A, in a sales contact and went out to a van to get Ms. A's laptop computer. It is undisputed that claimant, in going back to the store with the computer, stumbled or fell over a curb and injured her right knee and lower leg. Claimant, at the CCH, was not very precise about the mechanics of the fall or her injuries, adamantly insisting that she "hurt all over." Ms. A confirmed that claimant was crying and in pain at the time, that she took claimant to Ms. A's house and that claimant's knee was swollen and bruised and that she Ms. A advised claimant to see a doctor about her knee. It is undisputed \_\_\_\_\_ was a Friday and that claimant returned to work on Monday, and continued to work the rest of the week when her temporary employment with the client company was finished. Claimant subsequently went to a hospital emergency room (ER) on \_\_\_\_\_ and sought medical treatment at the (R Clinic) on February 9th and was taken off work for a week (until February 16th). Ms. A testified that during the week of February 9th she contacted claimant to tell her that another sales promotion was coming up and the client company would again be hiring temporary help. Ms. A said claimant was initially interested but later called to say that she had obtained full-time employment at a mall. It is undisputed that claimant began working full time at the (Employer H) on February 16th, worked there until March 25th, took off because of her injuries until March 30th, and then continued to work for Employer H until June 8th. Claimant testified that during the time she

worked for Employer H, she was in pain and had to use crutches. Ms. A testified that she visited claimant at the mall on at least one occasion during this time, bought a handbag from claimant and observed her waiting on other customers with no sign of distress.

The medical evidence included a report from the ER, dated \_\_\_\_\_, which reflected treatment to the right leg, prescribed an ace bandage, crutches and medication. Claimant was released to return to work the next day. In evidence is a report from the R Clinic dated February 19th, showing complaints of injury to the right leg and knee cap, "sharp pains in head, neck, back, fingers, elbows" and headaches. In a separate Initial Medical Report (TWCC-61) dated February 9th, Dr. M assessed that claimant had a contused, infected, bruised right leg, prescribed pain medication and took claimant off work until February 16th. An R Clinic record of February 24th shows complaints of headache, right knee pain, neck pain and right and left arm pain. A report dated February 13th, from Dr. F, at the (F Clinic), indicated complaints of the "right knee, right side of lower back, right elbow and shoulder" and noted a limp. A report, dated March 25th, from Dr. K, at F Clinic, notes that claimant "was at home yesterday when she lifted a small laundry basket, immediately she experienced excruciating pain similar to pain she experienced when she fell at work." Dr. K took claimant off work from March 25th through March 30th. Claimant continued to seek treatment at the R Clinic periodically through April 22nd. Claimant saw Dr. W on May 7th, who noted right knee complaints and pain, and recommended a right knee MRI, which showed "no pathology." Claimant saw Dr. W again on May 18th, June 1st and June 4th. Claimant was referred to Dr. R. In a report dated July 30th, Dr. W comments that claimant is receiving "a lumbar sympathetic block by [Dr. R]," contrast baths, as well as pool therapy for the right leg "and there is also indication that in the original injury she sustained some myofascial type injuries to the lumbar spine and the hip." In a report dated August 20th, Dr. W stated claimant was "exhibiting posttraumatic stress syndrome with a conversion reaction." Dr. W noted "atrophy of the [right] leg." A report dated October 9th from Dr. K at the F Clinic comments:

The above captioned patient is currently under our care of her work related injury. Her complaints are the same as in 02-10-98, right leg and knee, right hip, lower back, mid-back below her bra strap, right elbow, right shoulder, left ankle. As of this date she is still having difficulties in these areas. On this visit and earlier she is now complaining of left knee pain, this is a compensatory type pain.

The hearing officer, in her Statement of the Evidence, discusses some of the medical evidence and applies it to the definition of injury in Section 401.011(26), and concludes:

Therefore, it is this Hearing Officer's finding that the incident of \_\_\_\_\_ is a producing cause of the condition to Claimant's right hip and lumbar spine and of the contusions to the Claimant's right elbow and left ankle. As for the Claimant's psychological problems, it is this Hearing Officer's finding that the evidence is insufficient to establish that the Claimant is suffering from post-traumatic stress syndrome.

Carrier, in its appeal, cites the medical evidence and Ms. A's testimony that initially it appeared that only claimant's right knee and lower leg were injured, citing the ER record and Dr. M's note. Carrier also contends that Dr. W only discusses claimant's right leg condition and that claimant's sole complaint on \_\_\_\_\_ and sometime thereafter was about the right leg. Although the claimant's testimony regarding the mechanics of her fall and her injuries was very vague and unspecific (it is unclear how claimant could fall to her right knee, holding a computer, and injure her left shoulder and wrist) and claimant simply contended her whole body hit the ground and she "hurt all over," it was for the hearing officer to resolve facts as to what actually happened and we decline to substitute our judgment for that of the hearing officer. We further note that from time to time the audiotape reflects that something happened "like this." The hearing officer was obviously in a much better position to judge what happened and the nature of the demonstration than are we. Carrier also contends that Ms. A's testimony "is a great deal more credible than the testimony of the Claimant." As we have many times noted, Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We find the hearing officer's determinations on the extent of injury to be sufficiently supported by not only claimant's testimony, but also the medical evidence as summarized above.

Regarding disability, which is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at the preinjury wage, the hearing officer found disability only for those periods where claimant was taken off work due to the compensable injury, *i.e.*, for the week of February 9th through the 15th and from March 25th through the 29th. We hold that those periods are affirmable based on claimant's testimony and medical records.

Although another fact finder may have drawn different inferences from the evidence, which could have supported a different result, that does not provide a basis for us to reverse the hearing officer's decision on appeal, Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.), and we decline to substitute our judgment for that of the hearing officer. Accordingly, upon review of the record, 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.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Judy L. Stephens  
Appeals Judge