

APPEAL NO. 990333

Following a contested case hearing held on January 13, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the respondent's (claimant) meniscal tear was not a result of the compensable injury he sustained on _____, and that claimant had disability from the _____, injury from April 13 through July 17, 1998. The appellant (self-insured) has appealed the disability determination, asserting that claimant was not taken off work for his knee contusion, which was the compensable injury, but rather for left quadriceps tendinitis and medial meniscus tear, which were determined not to be part of the compensable left knee injury. Claimant responded, urging that the evidence is sufficient to support the challenged disability determination. Claimant asserts that the evidence shows that he was given work restrictions and then taken off work for his left knee problems even before the July 17, 1998, MRI was obtained which revealed the meniscus tear determined not to be part of the compensable knee injury.

DECISION

Affirmed.

We note that this hearing also considered claimant's companion claim (docket number 1) for a left knee injury on (date of injury for docket number 1), incurred while moving his mechanic's tools from his workplace. Relative to that claim, the hearing officer concluded that claimant did not sustain a compensable injury on (date of injury for docket number 1); that claimant did not notify the employer not later than the 30th day after the injury and good cause did not exist for failing to report the injury timely; and that if claimant had sustained a compensable injury on (date of injury for docket number 1), it did not extend to a meniscus tear of the left knee. No appeal was taken from the decision and order in that case.

In the case we here consider, the finding that the evidence did not establish a causal connection between claimant's meniscus tear and the compensable injury sustained on _____, and that conclusion that claimant's meniscal tear was not a result of the compensable injury sustained on _____, have not been appealed and have, thus, become final by operation of law. Section 410.169. Our discussion of the evidence will be limited to that related to the appealed finding that as a result of the compensable injury sustained on _____, claimant was unable to obtain and retain employment at his preinjury wage from April 13 through July 17, 1998, and the conclusion that claimant had disability resulting from the _____, injury from April 13 through July 17, 1998.

Claimant testified that he is employed by the self-insured as a mechanic; that on _____, while crawling out from beneath a bus he was working on, his left knee struck the steel cage that held a propane tank; that on March 23, 1998, he saw Dr. S for

this injury and was given an anti-inflammatory drug and returned to work; that the carrier disputed the claim and would not pay for the medicine; that he played 18 holes of golf on April 10, 1998, but did nothing in that activity to further injure his knee; that he returned to Dr. S for a follow-up visit on April 13, 1998, complaining that he could not squat and so forth because of his left knee pain; and that Dr. S then took him off work for three weeks because the self-insured could not meet Dr. S's work restrictions. Claimant, who indicated he had not had any knee problems prior to the _____, injury, further testified that he began treatment with Dr. F on April 17, 1998; that on (date of injury for docket number 1), he reinjured his left knee in the process of moving his tool box from the workplace; that he has been diagnosed with a torn meniscus in his left knee which requires surgery; that he has not returned to work since Dr. S took him off work on April 13, 1998; and that no doctor has said he can return to work.

Dr. S's March 23rd record reflects claimant's complaint of pain and swelling, Dr. S's finding of soft tissue swelling and tenderness in the lateral upper corner of the patella, Dr. S's assessment of knee contusion with post-traumatic inflammatory changes, and Dr. S's returning claimant to full-duty status and prescription for an anti-inflammatory medication. One of Dr. S's records of claimant's April 13, 1998, follow-up visit reflects the diagnosis of contusion of the left patella and the prescription of another medication. Concerning claimant's work status, this report states as follows: "No work requiring squatting down, bending knees or kneeling. If unable to meet limitations needs to be off work." In another record of the April 13th visit, Dr. S stated that if the employer is not able to comply with these restrictions, claimant may need to be off work until his follow-up visit in three weeks. Dr. S also noted that claimant said the self-insured would not authorize the medication he prescribed, that he was prescribing another medication, and that if it is not approved, claimant needs to inquire into the reason. Dr. S noted claimant's compliance as "good" but his prognosis and anticipated length of continued disability as "guarded."

Dr. F's report of claimant's initial visit on April 17, 1998, states he found restricted range of motion (ROM), swelling, and palpatory tenderness in the left knee; that claimant could not heel walk, toe walk, or squat due to pain; and that claimant is currently not in a work status due to his inability to perform his normal job capacity of squatting, bending, kneeling and loading of the left lower extremity. Dr. F further reported that claimant would be provided with conservative chiropractic care, would be given a functional capacity evaluation after one to two weeks, and would probably be sent for work hardening before being returned to work. Dr. F reported on May 19, 1998, that claimant was in work hardening and currently off work, that he had full ROM but also had palpatory tenderness, and that he is to stay in rehabilitation four hours per day and return in two days. On May 29, 1998, Dr. F reported that claimant presented with acute exacerbation of bilateral knee pain, stating that he had been asked to remove his tool box because he had not returned to work and exacerbated his knee pain while loading the tool box into a truck, and that claimant is still off work and going to work conditioning four hours per day. Dr. F further reported that claimant had trouble bending or squatting due to pain and had palpatory tenderness, and that he is to continue work hardening four hours per day and continue

follow-up visits with Dr. F twice per week. Dr. F's June 12, 1998, report stated that claimant was in an active work conditioning program for four hours per day and is recommended for six hours per day, that claimant has pain squatting or kneeling, and had pain in full left knee flexion. This report indicated that Dr. F was also treating the right knee. Dr. F's July 27, 1998, report states that an MRI report showed a tear of the posterior horn of the medial meniscus on the left and that the meniscus injury was either preexisting and asymptomatic, or was aggravated by the March 14th knee injury, or was sustained on (date of injury for docket number 1), while loading the tools. Dr. F opined that the meniscus injury was most likely a preexisting condition that was asymptomatic and exacerbated and/or aggravated as a result of the _____.

Dr. G, who examined claimant on July 6, 1998, apparently at the request of the self-insured, stated the diagnosis as left knee pain, contusion, quadriceps tendinitis, and dislocations or destructive lesions. Dr. G also opined that the _____, injury was limited to a contusion of the left quadriceps tendon, that the pain in the inner aspect could be related to a meniscus tear not caused by the contusion at the front of the knee, and that he believes that claimant has problems with persistent quadriceps tendinitis and cannot do any prolonged standing or squatting or kneeling because of this problem. Dr. G further stated that the cause of claimant's quadriceps tendinitis at this point is related to the contusion and he recommended that an MRI be done to further evaluate claimant's knee. Dr. G reported on July 31, 1998, that an MRI revealed a tear of the medial meniscus and that there is no evidence of any damage to the quadriceps tendon seen on the MRI. Dr. G wrote on August 17, 1998, that he felt the injury of _____, was limited to a contusion to the quadriceps tendon and that the MRI would indicate that this problem has healed.

Dr. F wrote on January 12, 1999, that claimant's _____, injury caused the quadriceps muscle to be weak and this caused destabilization of the anterior portion of the knee which, in turn, caused a chronic aggravation of the meniscus injury. He further stated that this condition also caused the knee to become chronically symptomatic to the point that claimant could not work in his usual job as a mechanic due to the job demands that included kneeling, squatting, bending, crawling, and supporting weight with the left knee.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* Whether claimant had disability and, if he did, the period of disability presented the hearing officer with questions of fact to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). As an appellate reviewing tribunal, the Appeals Panel will not disturb a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate,

150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could conclude from claimant's testimony and from the medical evidence that from April 13, 1998, when Dr. S gave claimant certain job restrictions or, alternatively, took him off work, until July 17, 1998, when an MRI revealed the torn meniscus, claimant had disability from the _____, injury. Dr. G indicated that the contusion diagnosed by Dr. S was to the quadriceps tendon and the hearing officer could conclude that the pain from the injury to that tendon kept claimant from being able to perform certain of his job activities notwithstanding that he also had a torn meniscus. The hearing officer could credit Dr. F's January 12, 1999, report describing the sequential linkage of the various aspects of the left knee beginning with the contusion suffered on _____.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge