APPEAL NO. 990520

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 February 9, 1999. Issues contained in two separate docket numbers were consolidated for consideration at this CCH. In one case, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on (date of injury for docket no. 1), and did not have disability. In the other case, the hearing officer determined that the claimant's (date of injury for docket no. 2), injury did not extend to the right knee. The claimant appeals these determinations, expressing her disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The facts of this case are convoluted. The claimant, who was 65 years old at the time of the CCH, worked as a certified nurse's assistant at a retirement home. She testified that on (date of injury for docket no. 1), she tripped over a phone cord and fell, injuring her head, neck, shoulders, and knees, but mostly her head, neck, and shoulders. She admitted to a prior injury on (prior date of injury), which resulted in arthroscopic surgery to the left knee, from which, she said, she recovered. In this (prior date of injury) injury, she said, she hurt both knees, her back, and neck, and both shoulders. Though work related, no claim for compensation for this 1995 injury was allegedly made.

In a letter of April 6, 1998, Dr. C, the claimant's treating doctor, wrote that the claimant injured her left knee as a result of the (date of injury for docket no. 1) fall and that it was within reasonable medical probability that she aggravated preexisting spondylosis of the cervical spine. He had earlier written on February 6, 1997, that the claimant had neck discomfort for the past four days, but "no predating injury." In a report of October 16, 1997, Dr. L appears to attribute a left knee injury to the fall in 1995. The claimant's report of the (date of injury for docket no. 1), injury identifies the head, arm, shoulder, and leg on the left side. In a letter of July 8, 1998, the Texas Workers' Compensation Commission asked Dr. D to examine the claimant to determine "which body parts were affected according to the injury dates reported." He examined the claimant on August 10, 1998, and noted multiple complaints "throughout the years" regarding the back, neck, shoulders, and knees. He considered her symptomatic regarding the knees, shoulders, elbows, and back as late as October 1996 and considered her current condition an "accumulation of all, as well as degeneration and ordinary disease of life."

On (date of injury for docket no. 2), the claimant again fell at work. The carrier accepted liability for a low back and left knee injury on this date. The claimant contends that she fell on both knees and that the injury also extends to the right knee. She said at the time that the left knee was bleeding and worse than the right knee. Even though, she

said, she complained to Dr. C of both knees, Dr. C did not treat the right knee because he was more concerned with the left knee. Dr. C's report of a visit on January 23, 1998, refers to a chief complaint of left knee pain, diagnoses left knee traumatic synovitis, and does not address the right knee. On April 13, 1998, Dr. A examined the claimant for the (date of injury for docket no. 2) injury. He examined both knees and concluded there was "[n]o objective evidence of injury."

The claimant had the burden of proving the nature and extent of her claimed injuries on (date of injury for docket no. 1), and (date of injury for docket no. 2). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she sustained the compensable injuries as claimed was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) further provides that the hearing officer is the sole judge of the weight and credibility of the evidence. While normally injuries of the kind claimed in this case can be established by the testimony of the claimant alone, this case presented a complicated history of previous injuries and degenerative conditions. Under these circumstances, the hearing officer relied primarily on the medical evidence to determine the cause of the various claimed injuries. From reviewing this evidence, he was not satisfied that the claimant met her burden of proving the disputed injuries under either docket number. As noted above, the evidence and history of the claimant's conditions was confusing and convoluted. The hearing officer evaluated this evidence and concluded that the claimant had not met her burden of proving that all of her claimed injuries were related to the falls on (date of injury for docket no. 1), and (date of injury for docket no. 2). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and 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). Applying this standard of review to the record of this case, we affirm the determinations of the hearing officer on the nature and extent of the claimed injuries.

The claimant also claimed disability as a result of the (date of injury for docket no. 1), injury. We find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst
Appeals Judge

CONCUR:

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Tommy W. Lueders
Appeals Judge

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Judy L. Stephens
Appeals Judge