

APPEAL NO. 990650

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 March 3, 1999. The issue at the CCH was whether the \_\_\_\_\_, compensable injury extends to the left knee and right shoulder. The hearing officer determined that the \_\_\_\_\_, compensable injury does not extend to the left knee or right shoulder. The appellant (claimant) appeals, urging that he did injure his right shoulder and left knee, such injuries are a direct result naturally flowing from the compensable injury, and the decision of the hearing officer should be reversed. The respondent (carrier) urges that the evidence adequately and completely supports the hearing officer's decision and the decision of the hearing officer should be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant testified that he injured his right knee on \_\_\_\_\_, when he fell at a construction site. The medical records indicate that the claimant has had multiple arthroscopic surgeries, a tibial osteotomy in 1994, a total knee replacement in April 1997, and a synovectomy in February 1998.

The claimant testified that on (claimant's alleged date of injury), he was walking down the steps outside his house when his right knee went out on him, causing him to catch himself with his left leg, injuring his left knee. The claimant went to the emergency room (ER) on (claimant's alleged date of injury), and the ER records indicate a history of walking down stairs, right knee gave way and took jolt to left knee. The claimant was also examined by his treating doctor, Dr. D, on (claimant's alleged date of injury). On that day, Dr. D indicates the claimant's right knee gave way and he twisted his left leg while walking down some stairs.

The claimant testified that Dr. D referred him to Dr. T who arranged for the physical rehabilitation program PRIDE. The medical records reflect the claimant attended PRIDE from July 1998 through September 1, 1998, when he was discharged from the program due to noncompliance with attendance requirements.

The ER diagnosis on (claimant's alleged date of injury), was left knee strain. On (claimant's alleged date of injury), Dr. D indicated the left knee was not swollen and the claimant had left knee pain, unknown etiology, with possible capsular strain or meniscal injury. On April 1, 1998, Dr. D stated the claimant's left knee was injured secondary to his right leg giving way. On May 21, 1998, Dr. T noted signs of effusion in the left knee and tenderness. Dr. T stated "injury to the left knee is a direct result of the right knee giving way." On August 27, 1998, Dr. M noted that the claimant had claimed his left knee "gave

"way" while climbing stairs at therapy, causing him to fall. Dr. M noted that there were no objective signs of effusion, local swelling or signs of any direct trauma. He also stated:

I have spoken to the ER doctor here today. He agrees that the patient had "very few findings" for the degree of fuss that he was making. They did do x-rays and they indicated that they were "completely normal." They did give him crutches and an Ace wrap, although he questioned [the] necessity, and I believe clearly expressed concern about the exaggeration of symptoms.

The claimant testified that while lifting weights at PRIDE, he injured his right shoulder on an unknown date. On August 11, 1998, Dr. T noted that over a period of two weeks, the claimant had complaints of right shoulder pain following some overhead work in the gym. On August 18, 1998, Dr. T gave the claimant an injection in his right shoulder for pain. On September 1, 1998, Dr. T noted that the claimant was alleging a shoulder injury, but after an examination by three doctors, none could find any objective evidence of an injury to the right shoulder. Dr. T's letter to Dr. D on October 30, 1998, states that he explained to the claimant that his pain in the left knee and right shoulder were a degenerative problem secondary to age; however, he also states that the left knee is associated with the right knee injury.

The hearing officer made the following findings of fact:

#### **FINDINGS OF FACT**

2. The Claimant did not sustain a right shoulder injury in July 1998 during medical treatment (physical therapy) necessitated by his right knee injury.
3. The Claimant did not sustain an injury to his left knee on (claimant's alleged date of injury).
4. The claimant does not have a right shoulder or left knee injury as a direct result of or naturally flowing from his compensable injury of \_\_\_\_\_.

We note, as the claimant has indicated in his appeal, that the date should be \_\_\_\_\_. As such, we will modify that finding, as follows:

#### **FINDING OF FACT**

4. Claimant does not have a right shoulder or left knee injury as a direct result of or naturally flowing from his compensable injury of \_\_\_\_\_.

The claimant has the burden of proving that he sustained a compensable injury and the extent of that injury. Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. The 1989 Act's definition of "injury" includes "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). Where an employee sustains a specific compensable injury, "he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefor, causes other injuries which render the employee incapable of work." Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam*, 432 S.W.2d 515).

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993. 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 as well as of the weight and credibility that is to be given 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 Company of Newark, New Jersey, 508 S.W.2d 701, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer resolved contradictions in the evidence against the claimant. When reviewing a hearing officer's decision for factual sufficiency of the evidence we will reverse such decision only if it is so contrary to 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer that the compensable injury does not extend to the left knee or right shoulder.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Alan C. Ernst  
Appeals Judge