

APPEAL NO. 990963

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 13, 1999, a hearing was held. The hearing officer determined that respondent's (claimant) _____, right knee injury was a cause of the "post traumatic arthritis" in his right knee, and that injury was a cause of disability on January 18, 19, and 20, 1993, and again beginning on June 11, 1998, to the date of hearing. Appellant (carrier) asserts that medical opinion as to causation relative to claimant's 1993 compensable injury is conclusory and states that the right knee arthritic condition is secondary to claimant's knee surgery. Carrier also states that disability resulted from claimant's 1996 left knee and back injury. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant worked for (employer) on _____, when, claimant testified, he stepped over a hose at work in an area where there had been an oil leak, which had just been cleaned with soap and water; when he completed the step, the footing was slippery causing him to twist his right knee "real bad." He saw Dr. H the next day. Dr. H's records of January 18, 1993, indicate that claimant tripped over a hose and struck his right knee, with a note that the knee gives way. Dr. H indicated that claimant should not work for two days. Claimant said he did not have surgery to his right knee after the 1993 injury but also testified that he had a prior right knee injury. Records in evidence from carrier show that claimant's right knee was injured in June 1991 and surgery was performed in July 1991. That surgery was described as reconstruction of the ACL and included the placement of a screw in the femur and staples in the tibia.

Claimant then testified that he injured his back in 1994, but was able to return to work after that. He injured his back and left knee in 1996. He did not go back to work for employer after the 1996 injury to the back and left knee. Claimant said he did not know whether he could have returned to work for employer after the 1996 injury because he was not given a chance to return. He did try to work for (employer 2) in January 1998 but was only able to work for 11 days. He said that the job for employer was less demanding than that at employer 2.

Claimant saw Dr. H on June 11, 1998, with Dr. H saying that he last saw claimant in March 1997. Claimant presented in 1998 with right knee pain, reporting an instance when his right knee locked. Dr. H noted on x-ray that there were "marked patellar femoral changes" and gave an impression of "severe degenerative arthritis right knee." He indicated that he would treat claimant's symptoms, but that a total knee replacement was needed. Claimant had seen Dr. He a week before on June 4, 1998, for his back condition, at which time Dr. He wrote that claimant noted his knees were worse with "extensive right knee pain." He considered an x-ray to show "slipping and sliding of the femur medially" and

said claimant's pain was consistent with "degenerative arthritis secondary to the surgery and knee injury." (Emphasis added.)

The only other note by Dr. H in the record under review is dated January 14, 1999. Dr. H then noted tenderness in the right knee and, again, gave an impression of posttraumatic arthritis of his knee. Dr. H then said, "[i]t is my opinion that this patient's present problems are directly related to his on-the-job injury of 1993 which caused his previously-repaired knee to go from one that was functioning without difficulty to his present situation."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The opinion of Dr. H provided in 1999 may be conclusory, but the weight to give it is for the hearing officer to determine. See Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997. It is not contradicted by a reasonable interpretation of Dr. He's June 1998 comment that indicated the degenerative arthritis was secondary to the 1991 surgery and the 1993 injury. The evidence sufficiently supports the determination that the 1993 twisting injury was "a cause" of posttraumatic arthritis of the right knee.

The carrier accurately argues that claimant was off work after the 1996 injury because of the 1996 injury. That does not change the standard that an inability to work at preinjury wages may result from several factors, so long as a cause of disability is the compensable injury. See Texas Workers' Compensation Commission Appeal No. 931134, decided January 28, 1994. While the hearing officer was not provided a statement by Dr. H in June 1998 that said claimant should not work because of his right knee problem, the hearing officer could consider the fact that Dr. H commented, at that time, that claimant was already "off from work" because of the back injury, as significant in considering how Dr. H then viewed claimant's knee condition. In addition, the hearing officer could consider Dr. H's June 1998 note in conjunction with Dr. He's recently preceding note which said there was extensive right knee pain, with Dr. He's impression that claimant's knees were "significantly worsened" with "what looks like ligament instability to the right knee." The medical evidence provides some support for a determination that as of June 11, 1998, a cause of claimant's disability was the 1993 right knee injury. Whether disability in 1998 and 1999 affects temporary income benefits for a 1993 injury depends on when maximum medical improvement occurred.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge