

APPEAL NO. 990974

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 19, 1999, a contested case hearing (CCH) was held. The issues concerned whether the respondent (claimant), had been injured in the course and scope of employment and whether he had disability resulting from his injury. There was a third issue of whether the claimant had timely notified the employer of his injury or whether the appellant (carrier) was discharged from liability for that injury.

The hearing officer determined that the claimant sustained an injury to his right knee and right lower leg on _____, and timely notified his employer of the injury within 30 days. He held that claimant had disability for the period from September 2, 1998, through the date of the CCH.

The carrier has appealed and argues that the evidence does not support that an injury occurred as the claimant has stated, but that some other injury likely occurred at another time. There is no appeal of the timely notice finding. Disability is appealed due to the lack of a compensable injury. There is no response from the claimant.

DECISION

Affirmed.

The claimant was employed by a pesticide/lawn maintenance company, (employer). He was working at an apartment complex serviced by the company on _____, when he stepped into a hole that had been concealed by grass. He caught himself with his hand but felt his right knee twist. He reported the incident to his immediate foreman (and coworker) when he returned to the truck and then to Mr. P, the production supervisor, when he returned to the headquarters. He went to the (ER) the next day, taking a day off without pay. He was told he had some ligament damage and was given a cortisone shot which relieved his pain and swelling. Claimant said he continued to work, thinking that his leg would get better, but that it got progressively worse so that he could barely walk.

The ER record is dated (a day after the date of injury). It notes that claimant stepped into a hole a year ago. He believed that the ER doctor made a mistake when recording that he had hurt his knee the year before; he said he told them he hurt it a day before. On September 16, 1998, claimant was examined by Dr. C, who found a possible Baker's cyst and pain on examination of the right knee and ankle. She recorded a history of the injury consistent with that given by the claimant in his testimony. An MRI was recommended to explore for possible internal derangement. Dr. C prescribed two weeks of daily physical therapy (PT). The claimant also emphatically denied that he was involved in an automobile accident on _____ as noted in a later PT document dated August 18, 1998. (The date on this document is apparently wrong because it refers to a referral on

September 16th from Dr. C. The MRI apparently was not done by the time of the visit with Dr. C on January 27, 1999. X-rays taken of the knee at the ER were normal.

Claimant testified that he was unable to work as a result of his knee problems. Dr. C's report noted that claimant's unsteadiness caused him to fall. Claimant's medical records do not reflect obesity or problems with being overweight.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. While it may be that there were inconsistencies to resolve, the state of the record is not such that a decision against the claimant was compelled. The hearing officer's determination that an injury occurred, and disability resulted therefrom, is supported by the evidence in the case. We do not agree that the great weight and preponderance of the evidence is against the hearing officer's decision, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge