APPEAL NO. 991193

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 5, 1999. The hearing officer determined that the compensable injury sustained on _____, does not extend to an injury to the appellant's (claimant) low back; the claimant reached maximum medical improvement (MMI) on October 15, 1998; and the claimant's impairment rating (IR) is six percent. The claimant appeals, urging that the hearing officer erred in all of the findings of fact against the claimant, and requests that the decision be reversed. The respondent (carrier) replies that the claimant's appeal is untimely, that the claimant's appeal fails to meet the requirements of Section 410.202, and that the hearing officer's decision is correct and should be affirmed.

DECISION

Affirmed.

The carrier contends that the claimant's appeal was not timely filed. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on May 11, 1999, with a cover letter dated that same date. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), the claimant is deemed to have received the decision and order five days after the date it was mailed. The fifth day after the hearing officer's decision was distributed fell on Sunday, May 16, 1999. Under Rule 102.3(a)(3), the deemed-receipt period extended to Monday, May 17, 1999. Section 410.202 and Rule 143.3(c) provide that a request for review is timely if it is filed on or before the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt. In this instance, the 15th day after the date of receipt was Tuesday, June 1, 1999, and the 20th day fell on Sunday, June 6, 1999. The claimant's appeal was mailed to the Appeals Panel on June 1, 1999, and was received on June 2, 1999. Therefore, the appeal was timely filed.

We now address the carrier's contention that the claimant's request for review was not adequate. The carrier asserts that the request for review fails to comply with Section 410.202(c) which provides, "A request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought." The Appeals Panel has read this requirement broadly, particularly in cases involving an unrepresented claimant where it is relatively evident what issues the claimant is appealing. Texas Workers' Compensation Commission Appeal No. 960775, decided July 18, 1996 (Unpublished). While we would not expect to see such a general appeal from a represented claimant, as is the case here, we have held that appeals which lack specificity will be treated as challenges to the sufficiency of the evidence, even those where the claimant was represented. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We find that the appeal is adequate in the present case to invoke our jurisdiction and raise the issue of whether there was sufficient evidence to support the hearing officer's decision.

The claimant testified that she injured her right knee on _____, while dancing the twist for a Mother's Day presentation. The claimant testified that she sustained two prior right knee injuries, in February 1989 and November 1989, which resulted in knee surgery. Following the injury on _____, the claimant sought medical treatment with Dr. Z, then Dr. P. The claimant testified that on May 20, 1998, her knee locked up, causing her to fall and injure her low back. The claimant testified that after Dr. P certified her as having reached MMI on July 2, 1998, with an eight percent IR, she was unhappy with the rating and felt she was not getting better, so she changed doctors and began to treat with Dr. A.

The medical records indicate that Dr. P diagnosed the claimant as having chondromalacia of the patella and "joint disorder NEC, unspecified." On June 18, 1997, the claimant had right knee surgery performed, a partial medial meniscectomy and chrondoplasty over the lateral condyle. The claimant, on March 13, 1998, had additional surgery and her postoperative diagnosis was type IV chondromalacia over the trochlear groove. On October 2, 1998, the claimant had an MRI of the right knee which revealed a rounded low signal in the knee joint measuring nine millimeters, compatible with a calcified loose body. The claimant testified that based on this latest MRI, Dr. A has recommended another arthroscopic surgery.

The claimant disputed Dr. P's certification of MMI and IR and on October 15, 1998, the claimant was examined by Dr. K, a Commission-appointed designated doctor. Dr. K examined the claimant, reviewed the claimant's medical records, and certified that the claimant reached MMI on October 15, 1998, with a 6% IR. On October 23, 1998, Dr. A, after reviewing Dr. K's report, indicated that the claimant was not at MMI because, based upon the October 2, 1998, MRI report, the claimant needed another surgery.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The claimant has the burden of proving that the compensable injury extended to an injury to her low back. 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. Although the claimant testified that she told Dr. P on May 21, 1998, that she had fallen due to her knee locking, there were no medical

reports indicating such a history was given by the claimant. The medical records indicate that the first mention of a low back injury due to a fall on May 20, 1998, was Dr. A's report of August 13, 1998. On cross-examination, the claimant testified that her right knee had been locking since February 1989, and her knee had given out, causing her to fall prior to _____. The claimant testified that she had no back problems prior to May 20, 1998, yet the medical records for the February and November 1989 injuries indicate that the claimant had complaints of back pain. The hearing officer determined that the evidence and testimony were insufficient to establish that any low back injury the claimant suffered on May 20, 1998, was a direct and natural result of her compensable right knee injury, or that the right knee injury was a producing cause of her current low back condition, and we find the evidence sufficient to support such a determination.

MMI is the point at which further material recovery or lasting improvement can no longer be anticipated, according to reasonable medical probability. Section 401.011(30)(A). A person can be at MMI, yet still continue to suffer symptoms and pain from the injury, if based on medical judgment there will likely be no further material recovery from the injury. Section 408.122(c) provides that the report of the designated doctor has presumptive weight which can be overcome only if the great weight of the other medical evidence is to the contrary.

In this case, the only medical evidence contrary to that of the designated doctor is Dr. A's October 23, 1998, report. The hearing officer noted that Dr. K did review the MRI dated February 23, 1998, which also appeared to reveal loose bodies in the right knee, and reviewed Dr. P's records which indicated that the claimant's knee condition was improving until he certified MMI and assigned an IR. While it does not appear that Dr. K reviewed Dr. A's report of October 23, 1998, or the MRI of October 2, 1998, the record is devoid of any

indication that the claimant requested clarification from the designated doctor. The claimant asserted at the hearing that she was not at MMI; however, no argument was articulated as to why the designated doctor's opinion should not be adopted. The hearing officer determined that the report of the designated doctor is entitled to presumptive weight, that the great weight of the medical evidence is not contrary to the report of the designated doctor, and that the claimant reached MMI on October 15, 1998, with a six percent IR. These determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra.*

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Judy L. Stephens
Appeals Judge