

APPEAL NO. 991353

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 3, 1999, a hearing was held. He (hearing officer) determined that the appellant's (claimant) compensable injury of _____, did not extend to his right knee. Claimant asserts that his back injury caused numbness in his right leg which resulted in repeated falls; medical evidence is also cited; and claimant concludes that injury to his right knee resulted from his work. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when, he testified, he hit his back on a tire-changing machine as he stood up and then fell, hitting his knee on the ground. There was no issue as to compensability for an injury to the back.

Claimant sought medical care the next day from Dr. T. Claimant said his knee did not hurt then but began hurting about one month later. He said that his right leg would get numb and at times he fell. He said he has fallen about 25 times, including his first fall, at home, about five months after the injury. Claimant's wife also testified about some of his falls and putting bandages on "scratches" on his knee thereafter.

Medical records in evidence show that Dr. T referred claimant to Dr. F on March 24, 1997; at that time he only mentioned claimant's back, with radiculopathy. Dr. F performed a functional capacity evaluation on April 1, 1997, as part of a work hardening program. He referred to claimant having struck his back at work, but did not mention any resulting fall upon the knee.

Claimant apparently changed doctors thereafter because on June 25, 1997, Dr. H noted that claimant had "hit his back on the tire changer." She, too, noted no fall on the knee to the ground. She did note that he had right leg pain, which she described as a radiculopathy, with his back pain. She referred claimant to Dr. C for injections. On March 18, 1998, Dr. H noted that claimant had a "problem with giveaway weakness and falling of on right knee." She did comment in regard to a problem in getting therapy for the claimant (indicating that the carrier believed claimant already had therapy through work hardening) that a "work-hardening program is essentially seeing how many pounds a patient can lift in a crate. It has nothing to do with addressing the soft tissue injuries that the patient sustained." However, she said that the patient "only lasted a couple of days" in work hardening. The records of Dr. F show that during the first week claimant attended five of seven scheduled work-hardening appointments; the second week he attended four of five scheduled appointments. The last session note, prior to one that said claimant has not returned, said that he was "close to normal physical ranges."

On December 2, 1998, Dr. H first recorded that claimant "fell to the floor" hitting his right knee, after injuring his back at work.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He could give weight to the absence of any report in the medical record about a fall to the knee for over 21 months in determining that claimant did not injure his knee at work. The hearing officer could also consider that claimant's initial fall occurred several months later at his home, not at work, in determining that any injury to the knee was not "naturally resulting from" the compensable injury. See Section 401.011(26). 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:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge