

APPEAL NO. 991655

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). After several continuances, a contested case hearing (CCH) was held on June 1, 1999. The record was left open in order to obtain some additional medical reports and allow a response by the opposing party. The record was closed on June 23, 1999. There were 27 issues, including an extent-of-injury issue, entitlement to supplemental income benefits (SIBS) for the first through 13th compensable quarters, permanent loss of income benefits (Section 408.146(c)), and whether respondent (carrier) was relieved of liability because of appellant's (claimant) failure to timely file a Statement of Employment Status (TWCC-52) for the second through 13th compensable quarters. There were some 36 stipulations which were included in 56 findings of fact and there were 27 conclusions of law. The hearing officer determined that claimant's compensable injury did not include nor does it extend to include an injury to the right knee; that claimant is not entitled to SIBS for the first through the 13th compensable quarters; that claimant has permanently lost entitlement to SIBS because he was not entitled to SIBS for 12 consecutive months; that carrier is relieved of liability for the second through the eighth and 10th through 13th compensable quarters of SIBS because of claimant's failure to timely file a TWCC-52 for each of those quarters; and that carrier is relieved of liability for the period from May 18, 1997, through May 30, 1997, for the ninth compensable quarter due to claimant's failure to timely file a TWCC-52. Only the extent-of-injury issue and one finding of fact is appealed. The hearing officer's determinations on all the other issues have become final, not having been appealed. See Section 410.169.

Claimant's appeal states that he is "dissatisfied with the [hearing officer's] decision," and gives as his reason:

The Hearing Officer took it upon herself to make a finding that [Dr. T] did not correlate claimant's fault to problems with his lower back when in fact, contrary to [Dr. T] note in his report that "Claimant fell onto his right knee "due to his low back pain and removal of instrumentation . . . [Claimant did have weakness to his right leg and both lower extremities . . ." Such a finding of contradictory position to [Dr. T] is against the great weight and preponderance of the evidence that [Dr. T] made no contradictory representation regarding claimant's right knee injury.

Claimant's appeal is termed as a "notice of intend [sic] to appeal" and does not contain a prayer for relief; however, we will infer that claimant is requesting that we reverse the hearing officer's finding on the cited issue and render a decision in his favor. Carrier responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that claimant suffered a compensable low back injury on injury 1. The medical records indicate claimant was digging with a shovel which got caught in some roots, causing claimant's injury. Claimant had lumbar surgery which included "internal fixation (instrumentation) of L4-L5, S1 TSRH system." The instrumentation was removed by surgery on October 8, 1997. Claimant testified that at some time in (Injury 2), as he was walking up to the steps of his house, he had back spasms which caused him to fall to his knees, injuring his right knee. At issue is whether this fall, and the resultant knee injury, were caused by or naturally flowed from his compensable low back injury and/or the instrumentation removal.

Claimant does not specify exactly which of the hearing officer's findings he is appealing; however, our review of the decision indicates it to be Finding of Fact No. 45, which states:

FINDING OF FACT

45. [Dr. T's] 12-11-97 medical report and 12-1-97 letter to Carrier attribute causation of Claimant's fall onto his knee as low back pain and removal of instrumentation, which contradicts his 11-8-97 report that reflects that Claimant's fall occurred 2 months before the instrumentation removal surgery.

Sequentially, claimant testified that he fell in Injury 2. The instrumentation removal surgery was on October 8, 1997. Dr. T's November 18, 1997, Specific and Subsequent Medical Report (TWCC-64) states that "X-rays today . . . reveal a good fusion at L4-L5 and S1. The patient does describe a fall that he had two months prior to surgery onto the right knee." Dr. T's December 1, 1997, letter states:

Recently the patient did experience a fall onto the right knee due to his low back pain and removal of instrumentation. The patient did have weakness to his right leg and both lower extremities. His fall was caused by the low back pain and at this time the patient is experiencing pathology to the right knee. The pathology is due to the pain experienced to the low back with previous surgeries which are the result of an injury on injury 1.

Dr. T's December 11, 1997, TWCC-64 only mentions that the right knee continues to be painful and does not refer to causation or the instrumentation removal.

The interpretation of Dr. T's December 1, 1997, letter vis-a-vis the November 18, 1997 TWCC-64 can be read in different ways. Such inconsistencies are to be resolved by the hearing officer. 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 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The hearing officer's Finding of Fact No. 45 can be interpreted as saying that the fall to his knee in Injury 2 was in part caused by the instrumentation removal which did not occur until October 18, 1997. In any event, whether the June/July 1997 knee injury "naturally resulted" or naturally flowed from the compensable 1992 low back injury was a determination for the hearing officer to resolve. She did so, determining that the preponderance of the credible evidence failed to establish such a connection, and nothing in claimant's appeal, or our review of the record, indicates that those findings are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge