

APPEAL NO. 991757

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 28, 1999. She (hearing officer) determined that the compensable injury of the appellant (claimant) did not extend to include a torn meniscus of the right knee. She also determined that claimant did have disability from his compensable injury from July 13, 1998, to September 17, 1998. Claimant appeals these determinations on sufficiency grounds and contends that he had disability through the date of the CCH. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that his compensable injury did not extend to include a torn meniscus of the right knee. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury and the extent of the injury. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995. The 1989 Act defines "injury" as "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 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 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that on _____, he jumped over a canal while he was working throwing cable, landing on his right leg. Claimant said he felt pain in his right knee that he had not felt before, and that he walked to go tell Mr. N that he was hurt and needed to go to the office. Claimant said he had torn a scar on the back of his leg, that he had had the scar since he was a boy, and that he went to the doctor for treatment. He testified that he told hospital personnel who worked on his leg that his knee was hurting. He said the front part of his knee has also been hurting since _____, and that it has kept him from working. Claimant testified that he was given a slip stating that he could return to work on May 5, 1998, but that he has not returned to work due to his injury. Claimant indicated, however, that he went back to work from May 9, 1998, to July 12, 1998. He denied that his knee has ever caused him to fall. When asked where he hurt himself on _____, claimant said on the back of his knee, but also indicated that he hurt his foot. Claimant indicated that at the time of the CCH, he had not yet had an MRI.

A _____, triage report states that claimant complained that his "skin busted open from burn, back of knee," and that it hurt to walk. In a May 3, 1998, report, it states that claimant said he could not "extend leg fully for 27 years." A July 2, 1998, report states that claimant has a circumferential burn scar, that he denied joint pain, describes claimant's knee range of motion, and then states "neuromuscularly intact." A July 14, 1998, operative report states that claimant underwent scar release and skin grafting surgery. A September 17, 1998, slip states that claimant is "OK for work." In an October 6, 1998, medical report, Dr. H stated that claimant complains of pain and persistent weakness in his right knee; that he has pain when walking; that he has obvious atrophy of the right quadriceps; and that one diagnostic impression is "rule out internal derangement, right knee." In an October 12, 1998, report, Dr. D stated that claimant is post skin graft surgery; that he has developed pain, swelling, and give way orthopedic symptoms since his injury; that the final diagnosis is "tear right medial meniscus;" and that claimant needs an MRI. In a June 3, 1999, report, Dr. H stated that an MRI has been recommended, but that authorization has been denied.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, she considered the issue of whether claimant sustained a torn meniscus injury on _____, and resolved this issue against claimant. We will not substitute our judgment for hers in that regard because the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Claimant contends the hearing officer erred in determining that he had disability only from July 13, 1998, to September 17, 1998. Claimant contends that his disability extended to the date of the CCH. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). In this case, claimant had surgery on July 14, 1998, and a doctor's work slip states that he could go back to work on September 17, 1998. We will not substitute our judgment for the hearing officer's regarding the disability determination because her determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge