APPEAL NO. 991850

Following a contested case hearing held on July 22, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant's (claimant) compensable injury of (injury 1), is not a producing cause of the condition of her left knee and upper jaw. Claimant has requested our review of this determination and a number of underlying factual findings on evidentiary sufficiency grounds. The respondent (carrier) urges in its response that the evidence is sufficient to support the challenged findings.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on injury 1. Not disputed are findings that on that date claimant sustained a compensable back, neck, and right knee injury when she stepped off an elevator; that she underwent surgery to her right knee injury in February 1998; and that she fell down some steps in (Injury 2) injuring her left knee, right hand, right eyebrow, neck, and head.

Claimant testified that while employed by (employer), she was making her rounds in a bank building and as she stepped off an elevator, she did not notice that the elevator doors had opened approximately six to twelve inches above the floor and she stepped down heavily on her right knee, but did not fall. She said that, initially, she had pain in her neck and low back but that after about a week she began to have right knee pain; that she was treated by Dr. O; that Dr. O referred her to Dr. B; and that Dr. B performed three arthroscopic operations on her right knee, on January 26, 1998; July 20, 1998; and April 12, 1999, respectively, to repair a torn meniscus. She said that notwithstanding what their records reflected, she complained to both Dr. O and Dr. B about her left knee. Claimant further stated that following the knee operations, she used crutches for some time. She also said that because of the right knee pain and the operations, she "favored the left knee" and developed pain in that knee which has persisted. She said that no diagnostic tests have been performed on the left knee, indicating that such testing was not approved.

Claimant further testified that on Injury 2, as she was nearing the bottom of the staircase at her apartment project, her right knee "locked up" and she fell, striking her mouth on the asphalt and loosening some upper teeth; that she had never previously nor has she since experienced a right knee "lock up"; and that because she could not afford root canals, she had to have 10 upper teeth pulled and replaced with a denture. A (hospital) emergency room record of Injury 2, states a history of claimant's having fallen that day after "missing several steps" and the examination revealing superficial abrasions on the left knee, movement with pain, abrasions on the right eyebrow and hand, and headache. The report does not mention claimant's right or left knee having given way.

Dr. O's impairment rating (IR) report of September 4, 1998, assigned an IR of 33%, which included 12% for right knee, and made no mention of the left knee. On October 23, 1998, Dr. O wrote that claimant continues to have problems with the knees which "were injured as a result of her job related accident"; that she has had arthroscopy of the right knee and now complains of pain and weakness in the left knee; and that he seeks authorization to treat the left knee. Dr. O wrote on November 11, 1998, that claimant is symptomatic in both knees with the left knee causing significant problems with pain and giving way weakness and he requested authorization to treat the left knee including obtaining an MRI. Dr. O wrote on May 5, 1999, that claimant sustained bilateral knee injuries on injury 1; that she has undergone multiple procedures on them; and that the left knee has become more symptomatic (pain, weakness, and swelling) due to the fact that she has had to bear increasing weight on that knee.

Claimant testified that the first of the three operations by Dr. B took place on January 26, 1998, and Dr. B's February 2, 1998, report states that claimant is "one week post-op arthroscopy, right knee, with partial lateral meniscectomy." Accordingly, we regard the evidence as indicating that claimant's first knee operation by Dr. B was indeed in January 1998 and not in February 1998 as the hearing officer stated in several factual findings. The only mention of claimant's left knee in the 1998 records of Dr. B which are in evidence is his note of March 17, 1998, discussing his follow-up examination of the right knee when he states that claimant "also describes some discomfort in the left knee but this is variable." Dr. B's note of February 19, 1999, states that claimant presents with new complaints of right knee pain, clicking and popping sensations, and occasional giving way.

Dr. R, the designated doctor, reported on January 4, 1999, that claimant reached maximum medical improvement on August 25, 1998, the date her surgeon, Dr. B, recommended that she be evaluated for an IR, with an IR of 21% for impairment from her cervical region, lumbar region, and right knee based on range of motion. Dr. R further stated, responding to a Texas Workers' Compensation Commission inquiry, that concerning whether claimant's left knee condition is related to the injury 1, injury, he finds it difficult to address the question because when he first evaluated claimant on December 16, 1997, she did not indicate that she had pain in either knee; that Dr. B noted on March 17, 1998, that claimant "described some discomfort in the left knee, but this is variable"; that given her exit from the elevator as she described it, she may have suffered an injury to the affected knee but not both knees unless she jumped and landed on both feet; and that while it could be argued that claimant had pain in the right knee and favored the other extremity, he did not understand why this problem is only mentioned on March 17, 1998, following the right knee surgery if her work-related injury occurred on injury 1. Dr. R concluded with the opinion that claimant's complaints of her left knee are most probably not related to her injury 1, injury.

Dr. T, who reviewed claimant's records on January 26 and January 29, 1999, opined that claimant's left knee problems are not a result of her injury 1, injury and more likely represent degeneration and chondromalacia such as was found in her right knee.

Claimant disputes findings that subsequent medical records (referring to claimant's initial right knee surgery) indicate no history of the right knee giving way following the surgery-until February 1999; that there is only one report of left knee pain noted on March 17, 1998, which was not specific and does not rise to the level of an injury; that the fall in Injury 2 was the result of a misstep and not due to the right knee giving way; that there was insufficient evidence that claimant's left knee problems stem from an altered gait or extra pressure due to the surgeries to the compensable right knee; and that there was no evidence of an upper jaw injury.

Claimant had the burden of proving by a preponderance of the evidence that her compensable injury of injury 1, extended to her left knee and to her upper jaw. She contended that her left knee was injured by having to "favor it" as a result of her right knee pain and operations and that her knee gave way on May 5, 1998, causing her fall and injury to her upper jaw. However, the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986) In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Tommy W. Lueders
Appeals Judge

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Dorian E. Ramirez
Appeals Judge