APPEAL NO. 991879

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On August 3, 1999, a hearing was held. He determined that appellant (claimant) did not injure his right knee at work on _____, did give timely notice to his employer, but does not have disability. Claimant asserts that he was not treated for posttraumatic osteoarthritis, that his knee replacement surgery was in February 1998, that he aggravated his knee condition at work on _____, and had disability; he also cites medical evidence of injury and appears to be objecting to a medical document in one of his exhibits, adding that he believes it was "doctored." Respondent (school) replied that the decision should be upheld.

DECISION

We affirm.

Claimant worked for (school) on _____. He testified that on that day he was working on a light at the top of a school bus when he slipped. When asked if he hit his knee, he replied that he hit another bus and then the ground, but did not use the term "knee" in his reply. He said that he mentioned the incident to his supervisor, Mr. J. (The hearing officer found that notice was timely given and that determination was not appealed.) Claimant said that he then talked to a secretary for school within a week but said he was told he was supposed to have reported the accident the same day. He did not indicate that he sought medical care after this incident but said that he did put duct tape around his knee. Claimant had surgery to the right knee in March 1997 and filled out a written notification to school in August 1997.

There are no medical documents from December 1996 in evidence. There is one from January 1997 but it contains no reference to any history of a fall. In February 1997, claimant saw Dr. O. He did not record any history of a recent, or even a two-month-old accident. His history shows complaints of pain, loss of motion, weakness, buckling, and popping; pain was "all over" the knee, and the knee was said to be swollen "constantly"; the joint was said to be "always stiff." Dr. O's impression was "symptomatic screw, right knee; degenerative changes disease, right knee; and arthritis, right knee." Dr. O did right knee arthroscopy in March 1997.

In August 1997, claimant provided a written question and answer statement. At that time he described that he had jumped off a bus sometime in December 1996, hurting his knee. He stated that he had questioned a secretary and referred to her indication that he was supposed to report in 24 hours and "couldn't file." He said he then called "somebody else, and they told me I could still file for workman's comp anyway . . . ." Claimant stated that he first had seen a doctor in January 1997.

Claimant provided statements from five people; the hearing officer could infer that they were also employees of school. They all referred to claimant having worn tape around his knee at some time, which one person identified as in 1996.

Claimant is correct in saying his total knee arthroscopy was in February 1998, not in August 1997.

The hospital record for the February 1998 surgery shows that claimant had injured his right knee "30 years ago," for which two operations were performed (claimant's foot drop was also referenced in that time frame), and a subsequent motor vehicle accident (MVA) (undated) which was said to also have injured the same knee. In addition, this medical record does refer to a fall from a bus, which "compounded" the above injuries. Another medical record by Dr. SA in August 1997 also refers to the MVA as occurring in 1975 and says that injury to the right knee at that time caused internal fixation of the right tibia and a "screw fibula implant." Dr. SA added that at that time (prior to the total knee surgery in 1998) claimant had had four operations to his right knee.

Claimant refers on appeal specifically to his exhibit four which contains language from Dr. S in December 1998, saying that claimant's "advanced osteoarthritis of right knee . . . could be a result of jumping from bus." Dr. S also said in December 1998 that claimant's advanced osteoarthritis of the right knee "is a result" of "jumping out of bus 96 Dec." In addition, Dr. C in April 1999, wrote to the Texas Workers' Compensation Commission and referred to an injury when claimant jumped off a bus on "December 19, 1996." Dr. C described claimant's condition as a "long-standing posttraumatic osteoarthritis of the right knee," adding that it was a "preexisting condition prior to his work injury of December 1996 when he jumped off the bus." The most that Dr. C stated in regard to the reference to a December 1996 incident was that it "may have aggravated or exacerbated a preexisting condition."

The medical document, which claimant objects to, was admitted as Claimant's Exhibit No. 11; it is a one-page unsigned, undated document with a letterhead of (Dr. O Orthopedic Clinic); it refers to claimant, but not to the condition, and states:

> This is not a workers' compensation case. This is not a legal or third person liability case. . . . The bill should be sent to the employer.

Since claimant offered the above and the record does not show that he objected to his offering of the above, the Appeals Panel will not consider his objection to the document for the first time on appeal.

Claimant also says that he was not treated for posttraumatic osteoarthritis but "partial shavings of the right knee." An April 1997 report of Dr. SA states that at the March 1997 surgery, "tissue shavings confirmed the diagnosis of degenerative arthritis." The hearing officer's reference to "posttraumatic osteoarthritis" was specifically set forth at the time of claimant's February 1998 surgery but is supported by Dr. C's opinion and is not

inconsistent with the above reference by Dr. SA and by the February 1997 report of Dr. O which referred to a symptomatic screw, degenerative changes, and "arthritis."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. Whether or not there has been a compensable injury is a question of fact for the hearing officer to determine. He could believe that claimant has a knee condition but not that it was caused, or aggravated, by an incident while at work. *See* Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). In this case, there was some medical opinion that indicated a connection between jumping off a bus and claimant's later surgeries, but there was other medical opinion which indicated only that such jumping "could" have affected the knee. In addition, prompt medical attention was not sought; then medical records from January and February 1997 do not contain any reference to a recent injury; and the February 1997 entry indicates problems of long-standing. In addition, the records of Dr. SA show that not only were the right knee problems long-standing, but were also extensive. That is not to say that a severely compromised part of the anatomy cannot be compensably injured through a relatively minor incident which aggravates the severe condition, but the hearing officer did not find any aggravation. His determination that claimant did not sustain a compensable injury is sufficiently supported by the evidence.

With an affirmed determination of no compensable injury, there can be no disability. *See* Section 401.011(16).

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:

_____
Robert W. Potts
Appeals Judge

_____
Judy L. Stephens
Appeals Judge