

APPEAL NO. 991890

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 August 10, 1999. In response to the issue at the CCH, the hearing officer determined that the _____, compensable injury of the respondent (claimant) was a producing cause of his "completely torn left anterior cruciate ligament [ACL]," but that it was not a producing cause of claimant's "fractured fragment of the medial tibial tubercle." Appellant (carrier) appeals, contending that the evidence is insufficient to support the hearing officer's determination regarding the torn left ACL. The determination regarding the fractured fragment was not appealed. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that the _____, compensable left knee injury was a producing cause of claimant's completely torn left ACL. Carrier asserts that the complete tear of the left knee ACL did not naturally flow from the _____ left knee injury. Carrier contends that claimant sustained a new injury when he slipped and fell while fishing and that this is the cause of his current knee problems. Carrier asserts that claimant had been found to be at maximum medical improvement (MMI) and that he had not told his doctors about any ongoing incidents where his knee had been giving way. Carrier also contends that not every consequence of a compensable injury will be found to be compensable.

Claimant had the burden to prove by a preponderance of the evidence that the total left knee ACL tear was caused by the _____ compensable left knee injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Claimant was not required to prove that the _____ compensable injury was the sole cause of the total ACL tear, but only that it was a producing cause of the total tear. See Texas Workers' Compensation Commission Appeal No. 962391, decided January 8, 1997. The use of "magic words" by an expert does not in itself establish causation, and the substance of the expert evidence, including the reasons given for the opinions expressed, must be considered in resolving the issue of causation. See Texas Workers' Compensation Commission Appeal No. 950455, decided May 9, 1995; Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992.

Section 408.021 provides that an injured employee "is entitled to all health care reasonably required by the nature of the injury as and when needed." This provision is frequently referred to as the lifetime medical benefits provision.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The background facts are summarized in the hearing officer's decision and order. Briefly, the parties stipulated that claimant sustained a compensable injury on _____, and it was undisputed that claimant had been diagnosed with a partial tear of his ACL. Claimant said he wore a cast on his knee for about six weeks and that, after that time, he tried to go back to work. He said he quit his job because he could not do the work. Claimant said his knee was giving way a few times per week and that he told his doctors about this. He testified that on May 5, 1998, his knee gave way while he was out fishing, and he fell. He went to the emergency room and was diagnosed later with a complete tear of his ACL and a fractured fragment of the medial tibial tubercle.

A June 1997 MRI report states under "impression" that there is a partial ACL tear. A May 1998 MRI report states that claimant's ACL is not visible and that it appears that it is completely torn.

In a December 8, 1998, report, Dr. W stated as follows:

At this point, the controversy is whether . . . the second injury in 5/98 was a new injury, non-work related altogether, as the sole cause of the current status of the patient's knee, or an aggravation of his prior injury of _____.

I feel the answer to this question hinges on whether . . . this patient truly was having ongoing give-way episodes secondary to internal derangement as a result of the _____ injury. . . .

[Regardless of whether claimant was at MMI], if there is documentation provided by the patient that he had been suffering give-way episodes, . . . the give-way episode that occurred in 5/98 while fishing and therefore his original injury, could be the cause of his current injuries or pathology in his knee currently. . . .

At times, these partially injured cruciate ligaments (due to their incomplete blood supply) can undergo further attenuation and tear completely and may also have been a cause of his give-way episode. . . . There is therefore the medical probability that the original injury of _____ led to a give-way episode that occurred during a non-occupational activity, causing a fall and further injury to the knee. Additionally, the atrophy and residual weakness in the patient's left thigh could have led to the give-way episode and additional injury. However, until evidence is provided that the patient was having ongoing give-way episodes after his injury . . . I would rule that this is a new injury. . . .

In a June 14, 1999, medical record, Dr. M stated that: (1) claimant was diagnosed with fractures of the tibial plateau and proximal fibula, as well as a partial ACL tear after his original _____ compensable injury; (2) he does not feel that a simple episode of falling after claimant's knee gave way could result in this significant of an injury; (3) claimant has marked atrophy in his left thigh; and (4) claimant "has had multiple episodes of instability consistent with an ACL deficient knee which has resulted in progression of his instability and accounts for his progression in severity and in MRI findings."

The hearing officer considered all the medical evidence and determined that the _____, compensable left knee injury was a producing cause of claimant's completely torn left ACL. In the decision, the hearing officer stated that:

Regardless of whether it is believed that claimant had ongoing "give way" episodes, the complete tear of the ACL in May of 1998 was a consequence that naturally flowed from the original injury

The hearing officer also determined from the evidence that the "compensable injury is a producing cause of his completely torn [ACL]." The hearing officer is the sole judge of the weight and credibility to be given to the evidence, including medical evidence. See Section 410.165(a) and Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984 no writ).

In this case, there was a subsequent falling incident which carrier characterizes as an intervening cause of the complete ACL tear. A carrier may be relieved of liability for an aggravation and/or complications of the original compensable injury due to a subsequent noncompensable event provided that the carrier can prove that the subsequent noncompensable incident is the sole cause of claimant's current condition. However, the hearing officer considered carrier's assertions but determined that the original compensable left knee injury and partial ACL tear was at least a producing cause of the total left knee ACL tear.

Carrier complains that (Dr. R) stated that claimant's x-rays showed he had "excellent healing" after his original injury and that claimant was placed at MMI. However, the fact that the x-rays showed healing of claimant's fractures and that claimant was said to be at MMI did not establish that there could be no worsening of the ACL tear if claimant's knee gave way. We perceive no error in the hearing officer's determinations.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge