

APPEAL NO. 992064

Following a contested case hearing (CCH) held on August 17, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury to her right knee on _____, and that she did not have disability. Claimant has requested our review, challenging the sufficiency of the evidence to support the factual findings underlying these conclusions. The respondent (self-insured) urges in response that the evidence is sufficient and that the decision should be affirmed.

DECISION

Affirmed.

The parties stipulated that on _____ (all dates are in 1999 unless otherwise stated), claimant was the employee of (self-insured employer). Claimant testified that on _____, while working as a sewing machine operator, there was a lull in the work and as she started to leave her work area, some garment carts were being pushed by another employee, a young man whom she did not know, and one struck her on the front of her right knee. She said that the young man asked her if he had hit her and she said that he had, but not to worry; and that this incident happened between 11:00 a.m. and 12:00 p.m.; that she felt some pain but continued working and finished her shift at 4:00 p.m.; that she worked the next day and then was to be off work until May 6th; and that on May 5th while taking a shower, she "lifted [her] leg to wash it and felt like something broke." In the incident report she gave the employer, she said that in the shower she put weight on her right knee and could not hold herself on it any longer. Claimant said that she yelled for her husband because she could not walk; that he took her to an emergency room (ER); and that on May 10th, she commenced treatment with Dr. H, who performed arthroscopic surgery on June 3rd. Claimant further testified that she later went to the place of employment where she tried, unsuccessfully, to identify the young man who pushed the garment carts.

The May 5th ER record states that claimant complained of right knee pain; that she felt like she twisted her knee in the shower, felt a popping, and now has excruciating pain and is not able to bear weight. The record further states that she relates this to an incident which happened about two weeks earlier when she was bumped by a car and had some pain but was able to ambulate.

Dr. H's Initial Medical Report (TWCC-61) reflecting the May 10th visit states the history as being struck on the right knee at work by a cart and of showering and feeling increasing pain. Dr. H diagnosed internal derangement and possible meniscal tear. Dr. H's note of May 19th stated that claimant was presently unable to work. Dr. H's records reflect

that he performed arthroscopic surgery on the knee on June 3rd and his June 7th note stated that claimant was presently unable to return to work.

In evidence is the May 15th statement of Ms. M who works in the employer's human resources office and who testified that she typed the statement. According to the statement, claimant came in to complete Family Medical Leave Act forms and said she also wanted to fill out an incident report because Dr. H would not approve tests she needed and "told her she needed to come in to work and report it as W/C and take him the name of our insurance carrier." Also in evidence is the May 20th MRI report stating the impression as chondromalacia Grade III with patella alta; prepatellar bursitis; mixoid degenerative involving the posterior horn of the medial meniscus with degenerative tear; and mixoid degeneration involving the lateral meniscus.

In addition to the dispositive legal conclusions, claimant has challenged the factual findings that she continued working on _____ without a problem; that she told the ER staff she twisted her knee in the shower, felt a popping in her knee, and had excruciating pain; that she did not prove by a preponderance of the evidence that she suffered an injury in the course and scope of her employment on _____; that she was unable "to obtain or [sic] retain" employment at wages equivalent to her preinjury weekly wage from May 5th through the date of the CCH due to her knee problem; and that her inability "to obtain or [sic] retain" employment was not the result of a compensable injury.

Claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), 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)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge