

APPEAL NO. 000133

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 21, 1999, a contested case hearing was held. With regard to the issues before him, the hearing officer determined that respondent (claimant) also sustained an injury to his neck, back, and left knee when he injured his right knee on (alleged date of injury); that appellant (carrier) waived the right to contest the compensability of the left knee injury; and that carrier did not waive the right to contest the compensability of the back and neck injuries. Carrier appeals the adverse determinations on sufficiency grounds. The file did not contain a response from claimant. The determination that carrier did not waive the right to contest the compensability of the back and neck injuries was not appealed.

DECISION

We affirm in part and reverse and render in part.

Carrier contends the hearing officer erred in determining that claimant also sustained an injury to his neck, back, and left knee when he injured his right knee on (alleged date of injury). Carrier asserts that there is no medical evidence of injuries to the left knee, back, or neck and that claimant's testimony that he sustained these injuries is not credible because claimant continued to work after his (alleged date of injury), injury.

Claimant testified that he injured his knees, back, and neck on (alleged date of injury), when he experienced a near fall and slammed into a wall inside a smoke stack. Claimant said he asked to go to the doctor, but he was told he needed to work because there were not enough employees. Claimant testified that he continued to work, and then asked again to go to the doctor when his right knee became more swollen. Claimant said he went to the doctor on _____, and that he was to stay "on the ground" to work. Claimant said he was still climbing at work after that time, however. Claimant testified he told the medical professionals who initially treated him about his problems with both knees, his back, and his neck, but that he was told the right knee would be treated first. Claimant testified that he is still having problems with his knees, back, and neck, and that he has not received treatment for anything but his right knee.

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). The scope of an injury thus can encompass ancillary conditions which are connected to the injury. See Hood v. Texas Indemnity Insurance Co., 209 S.W.2d 345 (Tex. 1948); Texas Workers' Compensation Commission Appeal No. 92452, decided October 5, 1992. It is the claimant's burden to establish that the left knee, back, and neck problems were caused by his compensable injury. The fact that the medical evidence does not show that an injured worker initially complained of an injury to a region of the body later found to be injured is a factor for the hearing officer to consider, but is not dispositive. See Texas Workers' Compensation Commission Appeal No. 991506, decided August 23, 1999;

Texas Workers' Compensation Commission Appeal No. 981375, decided August 7, 1998. The trier of fact judges the weight to be given expert medical testimony and resolves conflicts and inconsistencies in the testimony of expert medical witnesses. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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.

We have reviewed the record and evidence regarding claimant's injury to his left knee, back and neck. To the extent that the evidence was conflicting, that was a matter for the hearing officer as fact finder to determine. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Claimant was not required to offer medical evidence to establish that he sustained an injury. See Appeal No. 981375, *supra*; Appeal No. 991506, *supra*. Claimant testified that he did tell medical professionals about all of his injuries the week that they occurred, but that medical records did not reflect all of the injuries because the doctor concentrated on his right knee first. The fact that the left knee, back, and neck injuries were not mentioned in initial medical reports was a factor for the hearing officer to consider in making his determinations in this case. See Appeal No 981375. Later medical records do state that claimant complained of pain to his left knee, back and neck. The hearing officer stated in the decision and order that claimant's testimony regarding the extent of his injuries was credible. We note that the issue of claimant's credibility was one for the hearing officer to resolve. We will not substitute our judgment for that of the hearing officer because his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Carrier next contends that the hearing officer erred in determining that carrier waived the right to contest the compensability of the left knee injury. Section 409.021(c) provides in part that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The requirement for the carrier to dispute compensability is found in Section 409.021 and the rules that implement that section are Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1 - 124.6 (Rules 124.1 - 124.6). Carrier may get notice from the employer, the Texas Workers' Compensation Commission, or "any other written document which fairly informs the insurance carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury, and facts showing compensability." Whether a document fairly informs the carrier of the claimed injury is a fact determination for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 941655, decided January 26, 1995.

The hearing officer determined that carrier received sufficient written notice of the left knee injury on March 25, 1999, when it received a March 10, 1999, report from the

office of Dr. Y. Carrier did not dispute that it had received this document on March 25, 1999, but contended that the notice was not sufficient under Rule 124.1. The hearing officer determined that, because carrier did not contest the compensability of the left knee injury within 60 days of March 25, 1999, carrier waived the right to contest the compensability of the left knee injury.

The March 10, 1999, report stated that claimant hit both knees and that the left knee would be checked after the “right knee is taken care of.” There is no mention of pain, swelling, a contusion, or other indication of claimed damage or harm to the left knee. The pain drawing indicates only right knee pain and states that the right knee is the “involved” knee. After reviewing the evidence, the appeal, and the decision and order, we conclude that the determinations regarding carrier waiver and the left knee are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we reverse them. Cain, *supra*. We render a decision that carrier did not waive the right to contest the compensability of the left knee injury. However, because we have affirmed the determination that claimant sustained a left knee injury, the reversal of the carrier waiver determination does not affect compensability regarding the left knee.

We affirm that part of the hearing officer’s decision and order that determined that claimant sustained an injury to his neck, back, and left knee on (alleged date of injury). We reverse the hearing officer’s determination that carrier waived the right to contest the compensability of the left knee injury and we render a decision that carrier did not waive the right to contest the compensability of the left knee injury.

Judy Stephens
Appeals Judge

CONCUR:

Philip F. O’Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge