

APPEAL NO. 000144

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 16, 1999, a contested case hearing was held. With regard to the only issue before him, the hearing officer determined that appellant's (claimant) compensable left forearm, left femur and pelvic injury did not extend to or include an injury to the lumbar area and left knee.

Claimant appeals, contending that he has all along complained of his knee and back injuries which failed to be documented and that his problems with English impaired his ability to communicate with some of his health care providers. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a laborer and it is undisputed that he sustained severe injuries on _____ (all dates are 1999) when a trench, estimated to be 20 or 30 feet deep, caved in on him. He was dug out and taken to the hospital. Carrier accepted, and the parties stipulated, that claimant sustained an injury to his left forearm, left femur, and pelvis. Claimant testified that he was in the hospital five or six days, and has continued to receive treatment for his injuries. Claimant returned to work on May 21st in a light-duty capacity until June 23rd when he sustained an unrelated injury to his hand and/or fingers. Claimant testified that the only reason he left the employment of the employer was because of his finger injury.

Hospital records of _____ indicate claimant was treated for a closed fracture of the left femur, a closed fracture of the left forearm and a lateral compression pelvic fracture. Claimant's surgeon and treating doctor was Dr. L. Claimant testified, through a translator, that he does not speak English and that many, if not most, of his conversations were translated by his girlfriend who accompanied him to the doctor. At least one report from Dr. L specifically notes that risks and benefits of a procedure were explained "via an [sic] Spanish-speaking interpreter." Various x-rays were taken and all were normal other than for the treated injuries. Claimant testified that he complained of back pain but no specific back or knee complaints are documented. Claimant was examined by Dr. P on March 15th, but no back or knee complaints were noted. Other reports from Dr. L, including a report of April 16th, make no reference to the back or left knee. The April 16th report does state that claimant "is still complaining of some groin pain." Claimant contends this shows that not all complaints are listed because groin pain was not mentioned previously (although claimant was treated for a pelvic fracture).

Claimant sought treatment for the unrelated hand injury and was referred to Dr. R by an attorney on June 30th. In a report of that date, Dr. R notes low back and left knee

complaints, orders left knee and lumbar MRIs, and orders physical therapy. Claimant was subsequently examined by Dr. FL, carrier's independent medical examination doctor, who in a report of September 15th, notes the accepted injuries, treatment by Dr. R, some complaints of "pain in and about the back from the mid thoracic area over the lumbar region," and that "an interpreter was used," and comments regarding the back complaints, "I do not have any good reason for him to have these symptoms."

The hearing officer, in his discussion, summarized:

[T]he medical records are devoid of any notations as to left knee or low back injuries until the claimant went to a chiropractor on June 30, 1999. He had been referred to the chiropractor by an attorney.

Additionally, the claimant testified that although he felt pain in his back soon after the injury, he doesn't remember the first time that he had pain in his left knee.

The objective medical tests regarding the lumbar spine and the knee are, in my opinion, inconclusive.

Based on all the evidence, the claimant has not met his burden of proof and shown that his injuries include a left knee injury and a low back injury.

Claimant emphasizes the seriousness of the accident, that perhaps his communication was misinterpreted and urges that the hearing officer's decision "is against the great weight of the evidence and the precedent set by the Appeals Panel. . . ." Claimant sites no precedent which would support a reversal of the hearing officer's decision. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge