APPEAL NO. 000212

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 January 11, 2000. The issues at the CCH were whether the respondent/cross-appellant (claimant) sustained a compensable injury in the form of an occupational disease on _____, and whether the claimant had disability. The hearing officer determined that the claimant sustained a compensable injury to her left knee on _____, and had disability from _____, through January 11, 2000, the date of the CCH. The appellant/cross-respondent (carrier) appeals, urging that there is no evidence to support the findings identifying the claimant's left knee as the injured body part, and that there is insufficient evidence to support the hearing officer's determination of a compensable injury or the existence of or period of disability. The claimant filed an appeal asserting that all references to the left knee in the hearing officer's decision and order are typographical errors and should be corrected to reflect the right knee. The claimant also filed a response to the carrier's request for review, asserting that the hearing officer's decision is correct and supported by sufficient evidence.

DECISION

Affirmed in part, reversed and rendered in part.

It is undisputed that the claimant alleged an injury to her right knee and that the hearing officer's decision and order contains typographical errors indicating a left knee injury. We reform Findings of Fact Nos. 3 and 5, Conclusion of Law No. 3, and the decision such that references to "left" will be changed to "right."

The claimant worked for the ground crew of the employer, a fumigation and pest control company, whose business was to exterminate insects in overseas shipments. The claimant's job duties included installing and removing tarps, and securing the tarps with "sand snakes" (long tubes filled with sand). The claimant testified that on _____, she removed a tarp and loaded the "sand snakes" into the bed of a pickup truck to be moved to another location. According to the claimant, she jumped in and out of the bed of the pickup truck eight to ten times while loading the "sand snakes," which had to be loaded straight in the bed of the truck so that the tailgate would close. The claimant testified that at the end of the day she felt pressure in her knee, and the next day she informed the employer her knee was injured and sought medical treatment with Dr. S.

Dr. S's records indicate the claimant said "I tarped some crates yesterday and began feeling pressure to my right knee." Dr. S diagnosed the claimant with achilles bursitis or tendinitis, prescribed physical therapy, and released the claimant to light duty. Dr. S referred the claimant to Dr. H who diagnosed a knee sprain, and noted the history of injury as "patient jumped off truck, she does many times a day, her knee started to ache." On March 24, 1999, Dr. H released the claimant to light-duty work, no prolonged

standing/walking longer than 30 seconds, no squatting or kneeling, no climbing, and sitting 99% of the time. The claimant testified that the employer verbally offered her a job riding in a truck all day which was not within her restrictions, so she resigned her employment on March 24, 1999.

On March 29, 1999, the claimant gave a recorded statement to the carrier. When asked if the claimant recalled any specific, single event that would have caused the injury, the claimant said "no, cause I mean we jump off trucks. We do all kinds of stuff to get snakes out of the back of the truck but I can't say for sure of which part of it actually did it." In August 1999, the claimant sought medical treatment with Dr. R, her current treating doctor. Dr. R's record from August 9, 1999, states the claimant's history of injury as:

> Apparently she was tarping containers at work and removing weighted sand snakes which cover the tarps for fumigation and she twisted her right knee. She was in the bed of a truck jumping on and off of the truck and felt some kind of pressure in the knee at the time.

Dr. R assessed a probable internal derangement of the right knee and possible medial meniscus posterior horn tear; took the claimant off work; and recommended arthroscopic surgery.

The Texas Workers' Compensation Commission appointed Dr. F to examine the claimant and render an opinion as to the causal relationship between the claimant's injury and her job duties. Dr. F diagnosed a torn meniscus and internal derangement of the right knee. According to Dr. F, the daily work activity of jumping on and off a truck "mostly" caused the injury to the claimant's right knee. Dr. S opines that based on the claimant's history, walking and jumping at work, and the physical findings, the claimant's right knee injury is work related. Dr. H states that claimant had a preexisting patellofemoral disorder, but sustained an aggravation of the preexisting problem, incurring a new and distinct injury on "(date)."

The claimant had the burden of proving a compensable injury as alleged. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer found that the claimant sustained a knee injury on _____, while moving anchors into a truck, stating that although the claimant may not remember which specific step was the cause, the circumstantial evidence strongly suggests it occurred during one incident. The carrier argues that an accidental injury should be traceable to a definite time, place and cause and the claimant failed to establish what specific activity caused her knee injury. The Appeals Panel has considered and rejected similar arguments in Texas Workers' Compensation Commission Appeal No. 94278, decided April 12, 1994, and Texas Workers' Compensation Commission Appeal No. 93759, decided October 8, 1993. Those cases cite Hartford Accident and Indemnity Co. v. Contreras, 498 S.W.2d 419 (Tex. Civ. App.-Houston [1st Dist.] 1973, writ ref'd n.r.e.) in which the court of appeals held

that the claimant's testimony about lifting 50-pound sacks at work combined with the medical evidence of a soft tissue injury to claimant's back sufficiently established the accidental nature of the injury, traceable to a definite time, place, and cause. Likewise, in Transport Insurance Co. v. McCully, 481 S.W.2d 948, 950 (Tex. Civ. App.-Austin 1972, writ ref'd n.r.e.) the court noted that an employee need not meet the "nearly impossible burden" of proving which specific task during a period of exertion at work led to the injury. Similarly, in Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984), the Texas Supreme Court stated as follows:

> Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation.

The hearing officer resolved contradictions in the evidence for the claimant and concluded that the claimant did meet her burden to establish a compensable injury. While there were some inconsistencies in the history of injury, the hearing officer found those variations insufficient to overcome the claimant's credible testimony and corroborating medical evidence. The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). We cannot agree that the hearing officer's determination that claimant sustained a compensable injury is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no basis exists for reversing that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier appeals the hearing officer's finding of disability from _____, through January 11, 2000, asserting that the claimant worked until March 24, 1999. Disability is defined as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Although the claimant was placed on light duty following her injury, the claimant's recorded statement indicates that she worked for the employer after the injury, earning preinjury wages, until March 24, 1999. At the hearing, the claimant asserted disability only from March 24, 1999, through the date of the hearing. The claimant testified that she has been unable to work from March 24, 1999, through the date of the hearing because of her right knee pain, and this is supported by the medical records. The hearing officer's determination that the claimant had disability from _____, through January 11, 2000, is against the great weight and preponderance of the evidence. Consequently, we reverse the finding, conclusion and decision as to the period of disability and render a decision that claimant had disability from March 24, 1999, through January 11, 2000, with temporary income benefits payable in accordance with this decision.

We affirm the hearing officer's decision that the claimant had a compensable _____, injury to her right knee. We reverse the hearing officer's decision that the claimant had disability from _____, through January 11, 2000, and render a new decision that the claimant had disability from March 24, 1999, through January 11, 2000.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Susan M. Kelley
Appeals Judge