APPEAL NO. 000339

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN § 401.001 *et seq*. (1989 Act). On January 18, 2000, a hearing was held. The hearing officer determined that appellant's (claimant) compensable injury to his lower right leg did not include injury to the right knee, that claimant had no disability, and that respondent (carrier) timely contested compensability of a right knee injury. Claimant asserts that his knee was injured, that carrier "had prior knowledge" of the right knee injury before July 22, 1999, and that since his knee injury should be compensable, he does have disability. Carrier replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) as a carpenter. On _____, he was struck by a piece of two-by-four inch lumber that broke and flew through the air after having been struck by a sledgehammer; claimant testified that it hit him across his legs. Claimant's statement of July 27, 1999, stated that the board hit both legs but the right one was worse; he also said it hit his right leg on the "front shin" between the ankle and knee, but "closer to the ankle"; the skin was broken and it bled. There was no dispute that claimant gave notice of an injury to the foreman, Mr. C, at the time. Compensability of the right shin is not in issue. Claimant kept working until he saw Dr. G on June 22, 1999. According to claimant, in April 1999, between the injury and claimant's first visit to Dr. G, the right shin became infected.

Employer provided its Employer's First Report of Injury or Illness (TWCC-1), referring to the _____, injury date, not in February, but on April 22, 1999, stating that the body part injured was "right leg (shin area)." Claimant was seen by (clinic) on April 19, 1999; a history of injury two months preceding, involving the two-by-four piece of lumber striking claimant on "right mid shin area," was given. The area was said to have improved and then became discolored. Claimant was returned to work with "limit[ed] use of affected extremity."

Claimant began seeing Dr. G on June 22, 1999; Dr. G took claimant off work, noting the blow to claimant's "right anterior lower leg," and called for various tests. X-rays dated June 24, 1999, say that "lateral aspect shows joint effusion of the right knee." A statement of Ms. N, an employee of carrier, says that a work slip dated July 6, 1999, was received on July 22, 1999, and this was the first notice of a "possible knee fracture." There is a work slip from Dr. G in the record dated July 6, 1999, that refers to "possible fracture right knee" and it shows a stamp stating, "faxed" with "7-21-99" written in. The parties stipulated that carrier disputed compensability of a right knee injury on July 26, 1999. Even if claimant was correct in saying that the carrier had knowledge of a right knee injury earlier, no reference was contained in Dr. G's first report dated June 22, 1999, and none had been in

the April 1999 report of clinic. Carrier's dispute of July 26, 1999, was therefore within 60 days of its written notice of a knee injury, and the determination that carrier did not waive its right to dispute compensability of the right knee is sufficiently supported by the evidence.

As indicated by the hearing officer in his Statement of Evidence, claimant kept working until June 22, 1999 (approximately four months after the injury). In addition, a designated doctor, Dr. S, saw claimant in November 1999. He said that a torn meniscus shown in claimant's right knee by MRI "is probably congenital in origin," after noting no swelling in the right knee, no tenderness, and no instability. He also found a normal gait and normal range of motion of the right knee. While his opinion as to extent of injury is not entitled to presumptive weight, Dr. S did opine that there was an injury to the "right lower leg, not his right knee. . . ." In addition, carrier had arranged an examination of claimant by Dr. M in September 1999; Dr. M recited the fact of lumber striking claimant's legs and said, "the mechanism described is not likely, based on reasonable medical probability, to have produced the knee symptoms." Dr. M then followed that evaluation with a letter in November 1999 in which he recited that he had seen MRI results. He said that if claimant had been struck in the knee then he could relate the MRI findings to the accident. He adds that the MRI findings "cannot be related based on reasonable medical probability to a simple blow to the anterior shin of the leg, well below the knee."

The hearing officer's Statement of Evidence cites evidence that claimant continued working, the opinion of Dr. S, and the opinion of Dr. M as "persuasive and decisive" that claimant did not sustain an injury to his knee resulting from the _____, compensable injury to his right shin. The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. As fact finder, he could choose to give significant weight to the evidence of claimant's continued working and the opinions of Dr. S and Dr. M. The evidence sufficiently supports the determination that claimant's knee condition was not shown to have resulted from the compensable injury of _____.

While Dr. G took claimant off work on June 22, 1999, the hearing officer's Statement of Evidence indicates that claimant had worked until that time; tests were commenced at that time. Those tests raised the question of the right knee, beginning on July 6, 1999, and the hearing officer considered that claimant's inability to work was based on the knee condition, not the shin injured on _____. This determination is sufficiently supported by the particular circumstances of this case.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge