

APPEAL NO. 000464

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 5, 2000. The hearing officer closed the record on January 31, 2000. The issues at the CCH were whether the respondent/cross-appellant's (claimant) compensable injury includes injuries to the low back, right hip, both knees, degenerative joint disease (DJD), and osteoarthritis; whether the appellant/cross-respondent (carrier) waived the right to contest the compensability of the claimed knee, low back, and right hip injuries and the DJD and osteoarthritis by not contesting compensability within 60 days of being notified of those injuries; and whether claimant was entitled to reimbursement of travel expenses for medical treatment by or at the direction of Dr. C and, if so, in what amount. At the request of the claimant and upon a finding of good cause by the hearing officer, the following issues were added: does the claimant's compensable injury include an injury to the left hip and morbid obesity, and did the carrier waive the right to contest the compensability of the claimed morbid obesity and left hip injury.

The hearing officer concluded that claimant is entitled to travel expense reimbursement for treatment by or at the direction of Dr. C and that the carrier has already paid the agreed upon amount; that carrier did not waive the right to contest the compensability of the claimed knee injuries, the low back injury, the bilateral hip injuries, the osteoarthritis, the DJD, and the morbid obesity by failing to contest compensability within 60 days of being notified of these injuries; that claimant's compensable injury includes an injury to both knees, DJD of the right ankle and both knees, and osteoarthritis of the right ankle; and that claimant's compensable injury does not include injuries to the low back, right hip, or morbid obesity.

The carrier challenges for evidentiary insufficiency the legal conclusion that claimant's compensable injury includes an injury to both knees, DJD of the right ankle and both knees, and osteoarthritis of the right ankle, as well as several supporting factual findings. Claimant challenges for evidentiary insufficiency the legal conclusion that his compensable injury does not include injuries to the low back, right hip, or morbid obesity, as well as several underlying factual findings. The file does not contain responses to the requests for review. Two factual findings and the legal conclusion relating to the carrier waiver issue have not been appealed and have become final by operation of law. Section 410.169.

DECISION

Affirmed.

The parties stipulated that on _____, claimant, who was employed by (employer), sustained a compensable injury. The hearing officer's decision contains a detailed recitation of the evidence and her analysis of the evidence as it relates to the disputed issues. Accordingly, only so much of the evidence will be set out here as is necessary for the decision.

Claimant testified that on _____, while working for the employer at an airport as a passenger service agent, he was descending a cement staircase when his right foot slipped off the steel edge of a stair, all his weight went onto his right ankle, he heard an audible break, grabbed for a fence, and fell and that he was taken by ambulance to a hospital emergency room (ER) where he was diagnosed with right ankle dislocation and the fracture of a small bone. The ER record states the history as claimant's having twisted his ankle on a step and hearing something "pop." Claimant further stated that he underwent several operations on the ankle and some operations for the implantation of a dorsal stimulator; that he subsequently developed reflex sympathetic dystrophy (RSD), a condition not in dispute; that he also subsequently developed osteoarthritis and DJD, bilaterally, in his ankles, knees, and hips; and that because his pain prevented him from exercising, he gained weight. Claimant contended that favoring the injured right ankle resulted in an altered gait which damaged his opposite lower extremity joints. He also said that while he weighed 300 pounds before the accident, he was physically fit but that because his pain prevented his exercising, his weight now varies between 385 and 410 pounds. Incidentally, insofar as claimant's appeal of the determination that his morbid obesity is not a part of his compensable injury, claimant states in his appeal that he has never contended that his obesity resulted from the original injury but that he needs the carrier's assistance in losing weight in order to have any chance of his medical conditions improving.

Claimant further testified that his orthopedic surgeon, Dr. S, told him he did not wish to treat claimant's chronic pain and so he commenced treatment with Dr. W on March 28, 1996.

Dr. W testified that he specializes in the treatment of foot and ankle injuries; that although the initial trauma was to the right ankle, the injury to that joint cannot be isolated from the connected joints including the knees and hips; and that in his opinion, claimant's traumatic arthritis resulted from the original injury, the osteoarthritis resulted from the changed gait, and that it was "possible" that claimant's low back was injured in the fall. Dr. W also felt that claimant's weight gain since the accident was caused by claimant's refraining from exercise because of his pain. Dr. W's testimony supported the challenged findings that as a result of abnormal gait mechanics and muscular changes and disuse in the right leg following the compensable injury to the right ankle, claimant's right knee began to undergo degenerative changes and that as the natural result of compensating for his right leg weakness by overusing his left leg, claimant also experienced degenerative changes in his left knee, and that claimant sustained damage to both knees as a natural result of his compensable right ankle injury.

Dr. WS, who examined claimant on October 29, 1999 with Dr. W present, testified that he is specialized in occupational medicine and has had considerable training in orthopedics and that he reviewed most of claimant's medical records and took a history from claimant in addition to his physical examination. Dr. WS stated the opinion that the terms osteoarthritis and DJD are synonymous and that while the right ankle osteoarthritis may be attributable to the injury, the osteoarthritis in claimant's other joints is not. Dr. WS's testimony supported the challenged findings that claimant did not sustain any damage or

harm to the physical structure of either of his hips or low back as a result of his compensable right ankle injury. Dr. WS's report of December 6, 1999, further states the opinions that claimant's knees, hips, and low back are not part of the compensable injury; that the _____, injury is limited to the right ankle area including diagnoses of fractured right ankle, associated peroneal nerve distribution, possible RSD of the right lower extremity, left lower extremity shortening of less than one-half inch, and some traumatic arthritis in the right ankle.

Claimant had the burden to prove by a preponderance of the evidence that his compensable injury of _____, includes injuries to the low back, both hips, both knees, DJD, osteoarthritis, and morbid obesity. Because of the nature of the claimed injuries, other than the injury to the right ankle on _____, expert evidence was required. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.169) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, 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:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge