APPEAL NO. 000949

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 March 23, 2000. The issues at the CCH were whether the injury of _____, extends to and includes an injury in the form of bilateral carpal tunnel syndrome (CTS), an injury to the left knee, and a meniscal tear to the right knee; whether the appellant/cross-respondent (carrier) waived its right to contest the compensability of the claimant's CTS, left and right upper extremity injuries, an injury to the left knee, and a meniscal tear of the right knee by not contesting compensability within 60 days of receiving written notice of the claimed injuries; whether the respondent/cross-appellant (claimant) had disability; whether the claimant has reached maximum medical improvement (MMI) and, if so, on what date; and the claimant's impairment rating (IR). The hearing officer determined that the claimant did not suffer bilateral CTS or an injury to her left knee on _____; that the claimant did suffer an injury to her right knee which includes or extends to a tear of the medial meniscus; that claimant did not have disability; that claimant reached MMI on August 23, 1999, with a five percent IR; and that the carrier did not waive its right to contest the extent of claimant's injuries. The carrier appeals the hearing officer's determination that the claimant's compensable injury extends to or includes a tear of the medial meniscus on sufficiency grounds. The claimant appeals the adverse determinations regarding extent of injury, waiver, MMI, IR, and disability, requesting that the hearing officer's decision be reversed and remanded for a new CCH with a different hearing officer. Both the claimant and the carrier filed a response to each other's appeal, asserting that the hearing officer's determinations are supported by sufficient evidence.

DECISION

Affirmed as reformed.

The claimant testified that on _____, she slipped and fell landing on both wrists and knees. The claimant sought medical treatment and was diagnosed with a contusion of the left elbow and a sprain of the left wrist. On April 20, 1998, the claimant sought medical treatment with Dr. D. The claimant testified that she told Dr. D that she had pain in her left elbow and both knees. Dr. D took x-rays which revealed a fracture of the radial head of the claimant's left elbow and restricted the claimant's use of her left arm. In a written statement dated April 26, 1998, the claimant stated "when I fell I hit my left arm and my right knee." The claimant testified that she began to have numbness in her left hand three months after the date of injury and numbness in her right hand six or seven months after the date of injury. The carrier stipulated that it has accepted the right knee, left elbow fracture, and left wrist sprain as part of the compensable injury.

The claimant had a right knee MRI performed on June 10, 1998, and Dr. D performed arthroscopic surgery on September 6, 1998. Dr. D performed a chondroplasty after finding significant chondral defects and the menisci to be normal. The claimant testified that the surgery did not improve her right knee condition and she changed treating

doctors to Dr. S, a chiropractor, in February 1999. On June 28, 1999, an MRI of the right knee was performed and the radiologist concluded that the claimant had a grade III horizontal tear involving the posterior horn of the medial meniscus. Dr. S concurred with the radiologists' findings, stating that it is "inconceivable to have this much internal damage with out [sic] damage to the menisus." Dr. S referred the claimant to Dr. P, who reviewed the MRI of June 28, 1999, and found "in-substance abnormality of the medial meniscus." Dr. P opined that the claimant does not need right knee surgery, and explained that the abnormality on the MRI could be the result of Dr. D trimming out a small tear in the claimant's meniscus during surgery or a lesion in the meniscus which was not visible at the time of surgery.

The claimant testified that she was involved in motor vehicle accidents (MVA) on February 13, 1999, and July 29, 1999, and sustained only an injury to her neck in both MVAs. On March 5, 1999, Dr. D's records state that the claimant has recurrent tendinitis and intermittent numbness, worse at night since the date of injury, and progressively worsening on the left. On March 25, 1999, Dr. D's records reflect that the claimant said her right hand started bothering her after she injured the left upper extremity, having to use the right upper extremity more at work. Dr. D concluded that EMG and nerve conduction velocity testing revealed bilateral CTS, worse on the right than the left. Dr. S states that the preponderance of the medical evidence indicates that the fall caused the right knee injury and CTS. Dr. S referred the claimant to Dr. W, who states that direct contusion to the median nerve certainly can cause onset of CTS and would be consistent with the claimant's injury.

The Texas Workers' Compensation Commission appointed Dr. LW as the designated doctor and asked her opinion regarding the diagnosis of bilateral CTS and whether or not it was caused by the injury or repetitive trauma. Dr. LW concluded that the clinical evidence is very weak for CTS; that symptoms of CTS were not documented until months after the compensable injury and after the first MVA; and that the preponderance of the medical evidence indicates that any CTS that has developed is in all medical probability due to factors other than the initial injury or repetitive trauma. Dr. LW also concluded that the claimant's current meniscal tear is not related to the original injury. Dr. LW evaluated the claimant's left upper extremity and right knee and determined that the claimant reached MMI on August 23, 1999, with a five percent IR.

The claimant had the burden to prove the extent of her compensable injury. The 1989 Act defines "injury," in pertinent part, 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). It has been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the "full consequences of the original injury . . . upon the general health and body of the workman are to be considered." Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

The hearing officer found the evidence sufficient to causally link the claimant's right knee meniscus tear to the fall on _____. The carrier argues that proof of causation must be shown through medical evidence and that the credible medical records do not provide such a diagnosis. The medical evidence concerning the cause and diagnosis of a grade III horizontal tear of the medial meniscus was conflicting. The hearing officer chose to give more weight to the opinion of Dr. P over that of Dr. W. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we will reverse such decision only if it is so contrary to 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer that the claimant suffered an injury to her right knee which includes or extends to a tear of the medial meniscus of the right knee.

Conflicting medical evidence was presented concerning the cause of the claimant's bilateral CTS. Although a diagnosis of CTS must be based on expert medical evidence, we have routinely held that the cause of CTS can be established by the testimony of the claimant alone if found credible by the hearing officer. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996; Texas Workers' Compensation Commission Appeal No. 941077, decided September 26, 1994; and Houston Independent School District v. Harrison, 744 S.W.2d 298 (Tex. App.-Houston [1st Dist.] 1987, no writ). We have not required a claimant who is asserting CTS based on a single incident, as opposed to repetitive trauma, to prove causation by a reasonable medical probability. Texas Workers' Compensation Commission Appeal No. 992931, decided February 11, 2000. The hearing officer made a finding that the claimant did not prove by a preponderance of the medical evidence that she suffered an injury in the form of CTS on _____, or that her injury extended to CTS. From this finding, we can infer that the hearing officer found medical evidence material, but not required, in deciding the issue. The first medical record documenting CTS symptoms is March 5, 1999, eleven months after the date of injury. The claimant presented no medical evidence indicating an injury to her left knee. We find there was sufficient evidence to support the hearing officer's determination that the claimant did not suffer an injury in the form of bilateral CTS as part of the compensable injury; that the claimant did not suffer an injury to her upper extremities beyond the left elbow fracture and left wrist sprain; and that the compensable injury does not include or extend to an injury of the left knee.

Section 409.021(c) provides 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 carrier is notified of the injury, the carrier waives its right to contest compensability. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides, in part, that Section 409.021 and the implementing provisions of the statute in Rule 124.3(a) "do not apply to disputes of extent of injury." The CCH in this case was convened on March 23, 2000. Therefore, the hearing officer properly applied Rule 124.3 in determining that the carrier did not waive its right to dispute the compensability of the bilateral CTS, upper extremity problems, and the left or right knee medial meniscus tear.

The claimant argues that the date of MMI and IR found by the designated doctor is against the great weight of the medical evidence because it did not provide an IR of any of the body parts other than the right knee and left elbow. Given our affirmance of the hearing officer's decision regarding the extent of the injury, we likewise affirm the hearing officer's determination that the great weight of the other medical evidence is not contrary to the report of the designated doctor and that the claimant reached MMI on August 23, 1999, with a five percent IR.

"Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The carrier's appeal indicates that it does not dispute that the claimant had disability from September 9, 1998, through October 22, 1998, the time during which she was recovering from knee surgery. The claimant testified that she returned to work for the employer until January 6, 1999, when she quit because of right knee pain and because the job she was performing was not within her restrictions. The claimant obtained a job as a substitute teacher in September 1999 earning less than her preinjury wage and testified that she was able to perform the job because it was within her physical restrictions. After considering all of the evidence, the hearing officer concluded that the claimant has not suffered disability as a result of the injury of _____. Given the carrier's agreement that the claimant had disability for a period of time, we reform the hearing officer's decision to reflect that the claimant had disability from September 9, 1998, through October 22, 1998. As reformed, we find the evidence sufficient to support the hearing officer's determination on disability.

We affirm the decision and order of the hearing officer, as reformed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge