

APPEAL NO. 001028

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 April 11, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on or about _____; and that claimant did not have disability. The claimant appeals the adverse determinations on sufficiency grounds. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The appeals file contains a letter from Dr. T asserting facts not in evidence and medical records. Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3) indicate the procedure whereby "a party to a benefit contested case hearing" may request review of the hearing officer's decision. Rule 143.3(a). Rule 140.1 defines party to a proceeding as "a person entitled to take part in a proceeding because of a direct legal interest in the outcome." Clearly, Dr. T was not a party at the CCH nor is there any evidence, or allegation, that she is a subclaimant pursuant to Section 409.009. Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. Consequently, Dr. T's assertions and medical records not made a part of the record will not be considered on appeal. See Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992.

The claimant worked for the employer as a heavy equipment operator and sustained a compensable injury to his right knee on _____. It is undisputed that the claimant reached maximum medical improvement (MMI) on May 21, 1999, with a zero percent impairment rating (IR). The claimant said that he declined an MRI of the right knee and returned to work without any knee problems on or about May 24, 1999. The claimant testified that on _____, he sustained another injury to his right knee when he was helping to set stakes and twisted his right knee while climbing up and down the sloping terrain. The claimant signed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) on October 11, 1999, stating that he injured his right knee on _____, while "walking - misstep." The claimant completed another TWCC-41 on January 10, 2000, which states that he was injured on _____, "setting stakes - twisted knee on slope."

Dr. T, the claimant's treating doctor, testified that she treated the claimant on October 11, 1999, and he reported that he injured his knee while walking and either tripped or fell in a hole. Dr. T stated that she did not review the claimant's previous medical records, but based on the claimant's history and objective findings, the claimant sustained a new injury on _____. Right knee surgery has been recommended.

The carrier argued that the claimant alleged a new injury after learning that because he had been certified as having reached MMI, he would not receive any income benefits for time off work due to the surgery. The carrier submitted an affidavit from the claims adjuster, Ms. T. Ms. T stated that on October 11, 1999, the claimant told her that he would need to have surgery to his right knee and she told him that he would not be entitled to any income benefits for the _____, injury. According to Ms. T, the claimant called her several days later and alleged an injury to his knee which occurred on _____. The carrier also presented the testimony of Mr. T, the claimant's supervisor, who stated that he saw the claimant limping on September 16, 1999, and the claimant said that it was from his _____, injury.

The claimant had the burden to prove that he injured himself as claimed on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he 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, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). She did not find the claimant's testimony credible or persuasive. The hearing officer concluded that claimant did not twist or injure his right knee or aggravate his prior compensable right knee injury while at work on _____. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight 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). We find there was sufficient evidence to support the determination of the hearing officer that on or about _____, the claimant did not sustain a compensable injury.

The claimant appealed the hearing officer's finding of no disability. 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). Since we have found the evidence sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Susan M. Kelley
Appeals Judge