

APPEAL NO. 001041

On April 27, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and that claimant has not had disability. Claimant requests that the hearing officer's decision on both issues be reversed and that a decision be rendered in her favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant contends on appeal that she proved that she injured her knees while working for employer and that carrier's witnesses did not tell the truth.

Claimant's supervisor testified that ever since claimant began working at employer's thrift store in February 1997, claimant has said that she has bad knees, that claimant related her right knee problems to a previous accident, and that claimant did not work on _____.

Claimant said that her injury from her previous accident was to her left foot; that she lifted lots of heavy items at the thrift store in _____ and began having problems with her left knee; that she had surgery on her left knee in March 1999; that the surgeon said that she would eventually need surgery on her right knee; that she was off work for a month; that her left knee was fine after the surgery; that the week before _____, she lifted a lot of heavy items and bent and stooped a lot at employer's consignment store and both of her knees hurt; and that on _____, she felt burning pain in both knees when she lifted and hung 25 pieces of clothing on a rod. Claimant said that she was definite that she worked on September 21st but later said that she may have her dates mixed up.

Claimant went to Dr. V on September 27, 1999, and he diagnosed claimant as having arthritis of the right knee and took her off work. Claimant began seeing Dr. R on October 4, 1999, and he noted that claimant told him that she had been lifting heavy boxes of clothing which injured her right knee and reinjured her left knee. Dr. R kept claimant off work. Claimant was seen by Dr. P on October 19, 1999, and he wrote that claimant had had a work-related lifting accident with acute traumatic injuries to both knees. An MRI of claimant's right knee done on October 27, 1999, showed a tear of the medial meniscus, severe chondromalacia, and a tiny baker's cyst; and an MRI of claimant's left knee done the same day showed a tear of the lateral meniscus, a benign bone lesion, chondromalacia, and a tiny joint effusion. Dr. L saw claimant in November 1999 and he diagnosed a meniscus tear of the left knee and the right knee and noted that claimant needs surgery on both knees. Dr. L wrote that he feels that claimant's injuries are the result of the accident of _____.

Claimant had the burden to prove that she was injured in the course and scope of her employment and that she has had disability. The issues before the hearing officer were whether claimant sustained a compensable injury in the form of an occupational disease on _____, and whether claimant has had disability. The hearing officer found that there is no causal connection between claimant's work for employer and claimant's bilateral knee problems; and that claimant's inability to obtain and retain employment at wages equivalent to her wages prior to _____, is because of something other than the alleged injury of _____. The hearing officer concluded that claimant did not sustain a compensable injury in the form of an occupational disease on _____, and that claimant has not had disability. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16).

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). He states in the discussion section of his decision that he was not persuaded that any incident at work or repetitive activities at work caused claimant's bilateral knee problems. As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge