APPEAL NO. 001202

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 25, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable bilateral knee injury and that the claimant was not barred from pursuing workers' compensation benefits by electing group health care benefits to pay for treatment and arthroscopic surgery. The claimant appeals and expresses his disagreement with the determination that he did not sustain a compensable injury. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The determination that there was no election of remedies has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that on two separate occasions, one on _____ and the other on _____, he was thrown from a conveyor belt. The present case focuses on his contention that the later incident caused him to injure both knees. The diagnoses includes torn menisci. Arthroscopic surgery was performed on January 22, 1999, and, according to the claimant, he was told that eventually he would need total knee reconstruction.

The main point of contention at the CCH was whether the claimant injured his knees as a result of the incident at work or as a result of a long history of jogging. The resolution of this question was somewhat confused by the claimant's use of group health benefits. The carrier does not deny that the conveyor belt incident happened at work, but denies that it caused an injury. Rather it contended that the claimant only asserted a workers' compensation injury after being told of the likely necessity for future extensive surgery.

The claimant denied ever telling a doctor that he believed the jogging caused his injury and insisted he reported it immediately to his lead person, Ms. J. In a transcribed statement, Ms. J said she did not see the fall, but saw the claimant limping and complaining that someone turned on the conveyor belt when they should not have. Other higher-level supervisors stated or testified that they only learned of the claimant's knee problems in November 1998 and directly and repeatedly asked him if the problem was work related. According to this evidence, the claimant did not mention a fall even when pressed about whether his condition was work related. This evidence also reflects that the claimant did not report to them an injury until February 1999, after the surgery, and told them that he, the claimant, "did not realize how much it was going to cost" to do further surgery. Even when he was accommodated with light duty in November 1998, according to this evidence, he did not give an injury at work as the reason for the accommodation.

Medical evidence included the opinion of Dr. H that he felt the injury was work related and the comment of Dr. A that the claimant had surgery after a fall at work. Dr. B, the surgeon, wrote on April 3, 1999, that he told the claimant "that with the changes he has it is extremely difficult to call those changes acutely traumatic and I feel that they are more compatible with long term repetitive trauma such as what would be responsible from his jogging; therefore I have tried to tell him that is probably not workman's comp." On February 1, 2000, Dr. B wrote that the claimant was "somewhat unhappy" with the progress of his claim and wanted another statement. Dr. B responded that the claimant "tells me that his injury was at work and I have no reason to doubt that. He feels that I simply misunderstood him . . . when I recorded that he injured himself while jogging."

The claimant had the burden of proving that he injured his knees at work as claimed. 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. In this case, the hearing officer considered the evidence and concluded that the claimant failed to meet his burden of proof with credible evidence. In his appeal, the claimant argues that his evidence did prove his case and objects to the accuracy of various findings of fact. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. We will reverse a factual determination of a hearing officer only if that determination is so against 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). While some of the findings of fact appealed could arguably have been more meaningful if more complete, we cannot conclude that the hearing officer committed reversible error in this case. As he stated in his decision and order, the hearing officer did not find the claimant's evidence credible. Clearly, the evidence was subject to varying inferences. Under our standard of review of factual determinations of a hearing officer, we find the evidence sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable bilateral knee injury.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge