

APPEAL NO. 001337

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing was held on May 16, 2000. The hearing officer determined that the compensable injury of _____, does not extend to include the appellant's (claimant) condition after December 9, 1999; and that the claimant did not have disability after December 9, 1999. The claimant appealed on sufficiency grounds and that the hearing officer applied the improper standard in an extent-of-injury case. The respondent (carrier) responded, urging that the evidence was sufficient to support the challenged determinations and requesting the Appeals Panel to affirm the decision.

DECISION

Affirmed.

The claimant testified she worked as a cleaning aide for the employer and was picking up a plastic bag of trash on _____, when she felt her right knee "pop out, then back in." The claimant testified her knee began to swell so she sought medical treatment at the emergency room and was diagnosed with a sprained right knee. The claimant testified that she subsequently sought medical treatment from a doctor at the (Clinic) where she was also diagnosed with a right knee strain. Medical records reflect the claimant presented on September 10, 1999; September 24, 1999, and October 29, 1999; for treatment of a right knee strain.

The claimant sought treatment with Dr. D upon referral from clinic and was examined for the first time by Dr. D on October 7, 1999. Dr. D took a history from the claimant in which she stated she twisted her knee which resulted in a notable pop and some pain followed by increasing pain and swelling as the day progressed. Dr. D noted that the claimant's medical history was significant for a 1971 open arthrotomy to remove a cyst behind the kneecap. Upon physical examination and review of x-rays, Dr. D determined that the claimant had moderately severe arthritic changes to the lateral compartment with patellofemoral spurring. One of the views suggested the possibility of a limited loose body formation or acute meniscal tear. The x-rays also noted sclerotic narrowing about the lateral joint line which Dr. D believed to be long-standing. Dr. D wrote that he advised the claimant that, while the current work event seemed to bring the symptoms to the fore, much of her vulnerability was based on some long-standing degenerative change. Dr. D discussed treatment options with the claimant which included conservative therapies, arthroscopic debridement and knee replacement.

The claimant subsequently began treating with Dr. L on November 29, 1999, who initiated chiropractic therapy and ordered an MRI. Dr. L continued the claimant on light duty. The MRI was performed on December 9, 1999, and was interpreted by Dr. S. Dr. S indicated that the claimant had:

- 1) advanced degenerative changes throughout the complex right knee joint with effusion of the lateral popliteal and patellar bursa and a Baker's cyst laterally;
- 2) joint effusion of the lateral tibiofemoral joint with fragmentation of the lateral meniscus possibly partly representing residual debris from surgical procedure;
- 3) osteochondral defect of the lateral femoral articular condylar margin that appeared to be due to an old injury; and
- 4) degenerative changes in the cruciate ligaments and the medial collateral ligament.

On January 12, 2000, Dr. L referred the claimant to Dr. Sp for an evaluation and to assess the need for arthroscopy. On January 21, 2000, the claimant was examined by Dr. Sp, who noted the claimant had a prior history of knee surgery in 1972. Dr. Sp obtained the MRI results and upon review determined that the claimant had severe degenerative joint disease in her right knee. Dr. Sp discussed the same treatment options with the claimant as had Dr. D. The claimant returned to Dr. L on December 30, 1999, who issued the claimant a work-release slip taking her off work until further notice.

The hearing officer found that the claimant sustained a compensable injury in the form of a sprain/strain to her right knee. He found that the claimant had right knee surgery in 1972 and that since then had developed degenerative problems and another cyst. The hearing officer found that the degenerative knee problems and the cyst were not related to or caused by the compensable injury of _____. As an extent-of-injury case the standard to be applied was whether the compensable injury was causally related (was a producing cause) to the claimant's degenerative problems and cyst. Texas Workers' Compensation Commission Appeal No. 971725, decided October 17, 1997. We believe the hearing officer applied the correct standard in making his determination that the compensable knee sprain/strain was not a producing cause of the claimant's degenerative problems and cyst.

At the hearing the claimant asserted disability from December 9, 1999, to the date of hearing on May 16, 2000. The hearing officer found that the claimant did not show that she sustained disability as a result of the compensable injury of _____, after December 9, 1999, which was the date the MRI was performed. The hearing officer was free to believe that the reason for the claimant's disability (inability to obtain and retain employment at the preinjury wage due to the compensable injury (Section 401.011(16)) was the degenerative joint disease and cyst in her right knee which he determined not to be related or caused by the compensable injury of _____, and that the effects of the initial right knee sprain/strain were resolved by December 9, 1999.

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 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 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge