

## APPEAL NO. 001391

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 23, 2000. The hearing officer determined that the respondent (claimant) had disability as a result of the \_\_\_\_\_, compensable injury from April 21, 1998, to June 29, 1998, and again from August 3, 1998, to March 24, 2000. The appellant (carrier) appealed, contended that the evidence is not sufficient to support the decision of the hearing officer that the claimant had disability after June 29, 1998; and requested that the Appeals Panel reverse it and render a decision that the claimant did not have disability after that date. In the alternative, the carrier requested that the Appeals Panel render a decision that the claimant's disability did not resume until May 27, 1999. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

### DECISION

We affirm.

The claimant injured his right knee on \_\_\_\_\_. On May 5, 1998, Dr. A performed a partial medial meniscectomy that involved smoothing and debriding of a complex tear of the posterior horn of the medial meniscus. Dr. A released the claimant to return to work on June 29, 1998. The claimant testified that the pain in his right knee never went away; that after he was released to return to work, he worked for about a month; that the pain became so bad, he could not work; that he went to several doctors; that he had an MRI that showed a tear; that a second surgery was performed in July 1999; that he was taken off work; and that he has not returned to work. A report of an MRI dated January 27, 1999, indicates a radial tear through the anterior horn, body, and posterior horn of the medial meniscus and tiny swelling of the right knee. An operative report by Dr. O dated July 9, 1999, states that incomplete, but complex tears along the inner surface from about mid-meniscus back posteriorly were present and that the areas were smoothed and debrided. The claimant testified that after the injury, after the first surgery, and after the second surgery he had little or no swelling of the right knee, but had pain. Medical reports corroborate that.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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 carrier pointed out that the claimant stopped working during the summer of 1998

without being taken off work by a doctor. The claimant's testimony that he could not work because of the pain is sufficient to support the finding of disability. In addition, evidence that the claimant had a torn meniscus without swelling, that he had popping in his knee during that time, and that surgery was performed to repair additional partial tears supports a determination that he was unable to obtain and retain employment at wages equivalent to the preinjury wage because of the compensable injury from August 3, 1998, to March 24, 2000. The hearing officer's determinations concerning disability are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge