

APPEAL NO. 001516

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 June 13, 2000. The hearing officer found that the respondent's (claimant) fall in the course and scope of his employment on _____, caused an aggravation, acceleration, and worsening of his preexisting bilateral degenerative arthritis of the knees and concluded that his compensable injury includes bilateral degenerative arthritis of the knees. The appellant (self-insured) has requested our review of this determination. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant, who indicated that he is 55 years of age, testified that while working for the self-insured as an animal control officer on _____, he fell down some stairs at the courthouse; injured both knees and his left shoulder, as well as breaking two teeth; and was taken by ambulance to a hospital. He said he had sustained a prior left knee injury in _____ but continued to work; that his treating doctor, Dr. B, "scoped" that knee in _____ because of the _____ injury; and that although the knee was thereafter somewhat tender and weak, he continued to work. The claimant said his right knee was tender also. He further stated that he was off work for a few months in _____ due to an injury; that he returned to work without missing any more time related to his knee until his fall on March 9; and that prior to that fall he was also able to walk without a cane and run after and rope goats, horses, calves, and pigs. The claimant said that since the March 9 fall he has had to use a cane and cannot climb stairs. He also said he has had surgery on the injured shoulder and that Dr. B is requesting authorization to perform bilateral total knee replacements (TKR) and told him this was necessitated by the fall.

The self-insured contends that the hearing officer erred in determining that the claimant's compensable injury includes bilateral degenerative arthritis of the knees. The self-insured asserts that: (1) the claimant already had severe arthritis in his knees from a prior injury in _____; (2) the knee replacement surgery had already been discussed with the claimant in _____; (3) Dr. B caused confusion about the nature of the injuries the claimant sustained in his _____, fall at work and that the claimant sustained only contusions to his knees; (4) the contusions did not aggravate the preexisting arthritis; (5) the claimant's knee condition is the same as it was in _____; and (6) that the claimant's expert medical evidence relating his fall at work on _____, to the aggravation of the preexisting arthritis in his knees is speculative and not adequately supported by objective diagnostic testing.

In its appeal, the self-insured relies on the opinion of Dr. V; attacks the lack of an objective basis for the opinion of Dr. B, the treating doctor; and fails to mention the opinion of Dr. S, who performed a required medical examination. The self-insured asserts that

given the severity of the preexisting bilateral degenerative arthritis in both knees, it is “logically impossible” for that condition to have been aggravated by the mere contusions sustained in the March 9 fall; that the March 1999 injury “cannot be a producing cause of” the severe degenerative arthritic condition; and that “the current severe bilateral knee degenerative arthritis and need for TKRs is solely related to the pre-existing severe bilateral degenerative arthritis, not the 1999 injury. [Emphasis supplied.]”

From March 23 to June 7, 1999, Dr. B, an orthopedic surgeon, treated the claimant’s knees with a series of injections; then operated on the left shoulder; and in October 1999 stated that the claimant required a right knee replacement. There is medical evidence from Dr. B that the claimant “aggravated his arthritic condition in both knees” when he fell on _____. Dr. B also stated that the aggravation caused the claimant to seek treatment “earlier than he may otherwise have sought treatment.”

Dr. S reported that he examined the claimant and reviewed the claimant’s x-rays and the medical reports from Dr. B and Dr. V. Dr. S noted that the claimant does not take arthritis medications, that he has an antalgic gait when walking, that he uses a cane, and that he did not exhibit symptom magnification. Dr. S stated that:

Sometimes an injury will activate a process which has been quiescent but once activated will not go away. I am of the opinion that this has happened in this particular injury. . . . The injury has accelerated the degenerative process significantly and now the patient is unable to walk, unable to work, and unable to function in a normal manner because of moderately severe knee pain.

* * * *

The injury in question . . . has sufficiently accelerated the degenerative process in this patient’s left knee and perhaps his right knee also to the point where he does need surgery. . . . Had this injury not occurred, this gentleman could have very easily gone another 15 years before he required total joint replacement.

There was medical evidence from Dr. V that the claimant did not sustain an aggravation injury and that the March 1999 fall did not “cause or change, or precipitate any changes in the degenerative condition of the knees which was pre-existing.” In an April 20, 2000, report, Dr. T, who reviewed the records, agreed with Dr. V. Dr. V, an orthopedic surgeon who examined the claimant and reviewed the records, also testified that the injury to the claimant’s knees from the March 9 fall was limited to contusions which resolved; that the claimant was a candidate for TKRs in _____ due to his severe degenerative arthritis; and that this preexisting condition was not accelerated, enhanced, or aggravated by the fall. He also stated that he disagreed with the opinions of Dr. B and Dr. S to the contrary. He noted that Dr. S is not a surgeon. He also indicated that workers’

compensation insurance pays the surgeon three to four times more for TKRs than does other types of insurance.

The 1989 Act defines "injury" as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). The scope of an injury, thus, can encompass ancillary conditions which are connected to the injury. See Hood v. Texas Indemnity Insurance Co., 209 S.W.2d 345 (Tex. 1948); Texas Workers' Compensation Commission Appeal No. 92452, decided October 5, 1992.

The aggravation of an ordinary disease of life may be a compensable injury in its own right if the aggravation occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 941577, decided January 9, 1995. However, "there must be an active incident or sequence of incidents which are alleged to have resulted in the enhancement, acceleration or worsening of the pre-existing condition" as distinguished from a "mere recurrence of symptoms inherent in the etiology of the preexisting condition that has not resolved." Texas Workers' Compensation Commission Appeal No. 94168, decided March 25, 1994; Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994.

The trier of fact judges the weight to be given expert medical testimony and resolves any conflicts and inconsistencies in the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

It was the claimant's burden to establish that his injury included bilateral degenerative arthritis of the knees. We have reviewed the record and evidence regarding the claimant's compensable injury. To the extent that the evidence was conflicting, this was a matter for the hearing officer as fact finder to determine. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Any inconsistency in Dr. B's report was for the hearing officer to consider in light of the other medical records. We will not substitute our judgment for that of the hearing officer because her determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge