

APPEAL NO. 001683

On June 19, 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 issue by deciding that the compensable injury of _____, extends to the respondent's (claimant) low back. The appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. The claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that on that day while working for his employer he injured his low back and left knee when he and three coworkers lifted a heavy toolbox from the back of a truck. The carrier accepted liability for a left knee injury but disputes that the claimant injured his back at work on _____. JJ, one of the coworkers who helped the claimant lift the toolbox, testified that a few minutes after they lifted the toolbox the claimant told him that his back felt "weird."

On March 24, 1998, Dr. H diagnosed the claimant as having a left knee sprain but did not mention a back problem. Dr. H referred the claimant to Dr. LI, who, on April 3, 1998, diagnosed the claimant as having an anterior cruciate tear of the left knee but did not mention a back problem. The claimant began treating with Dr. LO on April 7, 1998, and Dr. LO reported that the claimant has a left knee injury but did not mention a back problem. The claimant said that he told Drs. H, LI, and LO that he injured his left knee and back when he lifted the toolbox. He said that Dr. LO told him that his back pain would stop after he had left knee surgery.

Dr. LO performed surgery on the claimant's left knee in April 1998 and performed a second surgery on the claimant's left knee in October 1998. The claimant said that he continued to have left knee and back pain after his knee surgeries. Dr. LO referred the claimant to physical therapy for his left knee and a December 1998 physical therapy note indicates that the claimant was complaining of low back pain. Dr. LA examined the claimant at the carrier's request in June 1999 and Dr. LA noted that the claimant complained of left knee pain and that the claimant denied difficulty with his low back. The claimant said that he told Dr. LA that he had knee and back pain.

The Texas Workers' Compensation Commission chose Dr. C as the designated doctor and Dr. C reported in September 1998 that the claimant was not at maximum medical improvement, stating that he felt that it was overlooked that the claimant could have a back injury.

The claimant changed treating doctors to Dr. A in October 1999 and Dr. A noted that the claimant complained of low back and left knee pain and referred the claimant to Dr. B. Dr. B recommended a lumbar MRI and an EMG. Dr. B reported that the claimant's lumbar MRI showed herniated discs at L3-4 and L4-5 and wrote that the claimant injured his lumbar spine at work on _____, when he lifted the tool box. Dr. R reported that the EMG done in January 2000 was strongly suggestive of bilateral L5 nerve root irritation, more on the left, and left L4 nerve root irritation. Dr. R stated his impression as posttraumatic multiple lumbar radiculopathies and posttraumatic left knee injury. Dr. B performed a third left knee surgery on the claimant in January 2000.

The hearing officer found that the claimant sustained physical harm or damage to the structure of his low back in the course and scope of his employment on _____, and she concluded that the compensable injury of _____, extends to the claimant's low back. The carrier contends that although the claimant was aware of how to report injuries because he has at least seven prior workers' compensation claims, the Employer's First Report of Injury or Illness (TWCC-1), which was offered into evidence by both parties, mentions only the claimant's knee and hip and not his low back. The carrier contends that it wrote "multi-body" as the nature of the injury in the Payment of Compensation or Notice of Refused Disputed Claim (TWCC-21), which both parties offered into evidence, because that was the claimant's contention which it disputed. The carrier contends that the hearing officer based her decision only on the TWCC-1 and TWCC-21. While the hearing officer did mention the TWCC-1 and TWCC-21 in her decision, it is clear from her discussion in the Statement of the Evidence portion of her decision that she found the testimony of the claimant and JJ credible and the reports of Drs. A, B, C, and R credible and that she did not base her decision solely on the TWCC-1 and TWCC-21 that both parties put into evidence. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. 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:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge