APPEAL NO. 001827

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 July 20, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that he has had disability as a result of his compensable injury from April 5, 1999, to July 25, 1999; and that the appellant (carrier) waived its right to contest compensability in this case. In its appeal, the carrier argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. The carrier also contends that the hearing officer erred in finding that it had waived its right to contest compensability, citing Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex.App.-Tyler 1998, no pet. h.). The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

We will only briefly summarize the facts most germane to this decision. The claimant testified that on _____, he was working as a production line supervisor for the employer; that he was assisting another employee in the blast room freezer where the vegetables are frozen; that he and his coworker were pushing a large rack of frozen vegetables out of the freezer; that the wheels on the rack had become frozen; and that he slipped and fell, landing on his left knee. The claimant stated that he completed his shift on _____, performing supervisory duties and that his knee was painful and he walked with a limp. He stated that he did not return to work with the employer following his injury and that he initially used sick leave and vacation because his supervisor advised him to do so. The claimant testified that his knee condition continued to deteriorate and that he thought he should seek medical attention, but he did not do so because his supervisor delayed in sending him to the doctor and the claimant did not have the money to pay for the treatment himself. The claimant stated that on April 5, 1999, he again advised his supervisor that he needed to go to the doctor and his employment was terminated. On cross-examination, the claimant acknowledged that in 1972 his left knee was punctured by a stick, which left a scar. However, he stated that he did not seek medical treatment for that injury and that he did not have any problems with his knee as a result of the incident. In addition, the claimant acknowledged that he was involved in a motor vehicle accident in 1995 in which his car was totaled, but he insisted that he did not sustain any injuries in the accident.

On May 31, 1999, the claimant sought medical treatment at the emergency room. The records from the emergency room reflect that the claimant complained of left knee pain and numbness and provided a history of having fallen at work on _____. The claimant was noted to have left quadriceps atrophy. The x-ray report of the claimant's left knee states that "[w]hile a definite fracture line is not identified, the radiographic appearance is consistent with the patient's history of untreated trauma on _____.

The current appearance suggests healing of probable compression fracture of the patella." Thereafter, the claimant sought treatment from Dr. R, who referred the claimant to Dr. P. Dr. P diagnosed the claimant with a partial tear of the left patellar tendon. On August 25, 1999, Dr. P surgically repaired the patellar tendon tear. In a letter dated October 20, 1999, Dr. P opined that the claimant's _____, injury had caused a contusion to the left patellar tendon with a partial tear.

On May 17, 1999, the claimant faxed an injury report to Mr. C, the employer's safety manager. On July 6, 1999, the carrier sent a letter to the claimant advising him his injury had been reported by his employer and that it provided workers' compensation coverage to his employer and was handling his claim. There is no evidence in the record to suggest that the carrier has ever filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) contesting compensability in this case.

The claimant had the burden to prove that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's decision is against the great weight of the evidence. The carrier argues that because of the claimant's delay in seeking medical treatment in this case, expert evidence of causation was required. We cannot agree that causation of a knee injury from a fall is a matter so beyond common experience such that expert evidence of causation was required. However, we note that the evidence from the emergency room, Dr. P, and Dr. R likewise provides evidentiary support for the hearing officer's determination that the claimant sustained a compensable injury to his left knee when he slipped and fell landing on it at work. Our review of the record does not demonstrate that the hearing officer's determination that the claimant sustained a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse it on appeal. Pool; Cain.

The carrier argues that the hearing officer erred in determining that it had waived its right to contest compensability under Williamson, *supra*. The carrier's reliance on Williamson in this case is misplaced. We have previously recognized that Williamson is limited to situations where there is no damage or harm to the physical structure of the body, as opposed to those instances where there is an injury or disease, which is not

causally related to the employment. *See* Texas Workers' Compensation Commission Appeal No. 990223, decided March 22, 1999, and Texas Workers' Compensation Commission Appeal No. 990135, decided March 10, 1999, and the cases cited therein. In this case there is clearly damage or harm to the physical structure of the claimant's left knee. As such, the carrier was not relieved of its duty to contest compensability under Williamson. It is apparent that the carrier received notice triggering the 60-day dispute period of Section 409.021 by July 6, 1999, when it sent a letter to the claimant advising that it had received notice of his injury from the employer. The record does not contain any evidence that a TWCC-21 contesting compensability has ever been filed by the carrier. Accordingly, the claimant's injury became compensable as a matter of law pursuant to Section 409.021(c).

The carrier's challenge to the hearing officer's disability determination is dependent upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the hearing officer's injury and carrier waiver determinations, we likewise affirm her disability determination.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge