

APPEAL NO. 001846

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 19, 2000. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury to his left knee and low back on _____. The hearing officer determined that the claimant's compensable injury does not extend to include an injury to the right elbow, right hip, right knee, right foot, left hand, left thumb, and depression. The claimant appealed, stated his disagreement with the determinations of the hearing officer, and requested that the Appeals Panel reverse the decision of the hearing officer. The carrier responded, stated that the determinations of the hearing officer are supported by sufficient evidence, and requested his decision be affirmed.

DECISION

We affirm.

The claimant testified that on _____, he was injured lifting weights at a gymnasium where he worked. A report of an emergency room indicates that he was seen the next day and that the diagnoses were lumbar sprain and left knee strain. In an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated October 20, 1998, the claimant indicated that he had injured his left knee and lower back. The claimant said that the carrier denied proper treatment; that Dr. P performed arthroscopic surgery on his knee on March 17, 1999; that he used crutches before he had the surgery; that about a week before he had the surgery, he fell and injured his right elbow; that use of crutches caused pain in his armpits; that Dr. P recommended that he use a cane to relieve the armpit problem; that he used a cane and the pressure of the cane caused a nerve problem in his left hand; that he still has knee pain; that the knee surgery was not successful and he may need additional surgery; and that he became depressed and Dr. P referred him to a psychologist. The claimant stated that his right hip began hurting three, four, or five months after the knee surgery; that he thought his hip hurt because of the use of the crutches; that his right foot started hurting about six or seven months after the surgery; and that his left hand began hurting about nine or ten months after the surgery.

A report of an MRI dated November 17, 1998, indicates normal results at L1-2, L2-3, and L3-4; moderate to severe degenerative disc disease without disc herniation, spinal canal stenosis, or neural foraminal stenosis at L4-5; severe degenerative disc disease with narrowing of the neural foramina bilaterally and posterior marginal osteophytes at L5-S1; and a small transitional disc at S1-2. A report of an MRI of the left knee dated January 15, 1999, shows a meniscal tear with a cyst. Knee surgery was performed on March 17, 1999. On April 20, 1999, Dr. P reported that the claimant had problems with his knee, that he still had pain in other parts of his body, and that he complained of severe depression; prescribed Prozac for depression; and opined that all of the claimant's problems were related to the claimant's injury. In a note dated August 3, 1999, Dr. P said that the claimant

continued to have moderate to severe pain in the left knee, right hip, low back, and right elbow; that the claimant felt that the pain was exacerbated by having to use crutches; that he also complained of right foot pain; and that he, Dr. P, was concerned that it might be arthritis. In a letter dated January 3, 2000, Dr. P said that he last saw the claimant on August 3, 1999, because he moved out of town; that on _____, the claimant sustained an injury to his left knee and lower back; that arthroscopic surgery was performed with less than optimal results; that one week prior to surgery, due to weakness of the lower extremities directly related to his knee condition and pain radiating from his lower back, the claimant fell at home and injured his right elbow; that the condition did not respond as expected to conservative care; and that due to chronic pain, the claimant developed depression to the point that he was not able to return to work because of his physical and now mental condition. Dr. P reiterated that the right elbow condition and depression are both related to the injury that occurred on _____. The claimant moved to Virginia, lived there for some time, and was treated by Dr. B. In a report dated January 5, 2000, Dr. B opined that from the history provided by the claimant of lifting about 100 pounds with his left hand and pain in his left hand, the claimant injured his left hand. Dr. B also reported that the claimant believed that he had other problems because of the changed gait and use of a cane. Dr. B opined that the claimant was having a lot of other global symptoms such as pain in his right knee, right heel, right hip, right side of the cervical spine, and right elbow due to localized trauma which may very well be related to the change in his gait mechanics. On February 7, 2000, Dr. B reported that the claimant complained about his left hand and thumb and depression.

On May 8, 2000, Dr. X examined the claimant at the request of the carrier. He reported that the claimant was difficult to examine and obtain a history from; that observations of the claimant walking in the office were not consistent with observations during examination; and that he felt that the claimant was a malingerer and symptom magnifier. Dr. X referred to a video that is not of the claimant and to a video that is of the claimant. The error in referring to the video that is not of the claimant does not appear to be a significant part of Dr. X's report.

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, determines 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). An appeals level body is not a fact finder and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would 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). After making a finding of fact the includes the stipulations entered into by the parties, the hearing officer made the following findings of fact:

2. Claimant did not sustain an injury to his right elbow, right hip, right knee, right foot, left hand and left thumb in the course and scope of his employment on _____.
3. The medical evidence is insufficient to establish a causal relationship between the Claimant's claimed injuries to his right elbow, right hip, right knee, right foot, left hand, left thumb, and depression and his compensable injury of _____.

In the statement of the evidence in his Decision and Order, the hearing officer did not summarize the evidence and wrote:

Based on the credible evidence and testimony presented, the Claimant failed to meet his burden of proving, by a preponderance of the evidence, that he sustained an injury to his right elbow, right hip, right knee, right foot, left hand and left thumb in the course and scope of his employment on _____ nor that these alleged conditions, including depression, are causally related or a naturally flowing effect of his compensable injury of _____.

"Injury" is defined 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). Language used by the hearing officer raises some questions concerning application of the law and additional findings of fact and use of the language in the 1989 Act and in Appeals Panel decisions would have been helpful; however, the Decision and Order of the hearing officer does not indicate that the hearing officer did not properly apply the law to the facts. The hearing officer's determinations 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.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge