

APPEAL NO. 001999

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 17, 2000. The record closed on July 29, 2000. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a compensable left knee injury, but not a lower back injury, on _____; that the claimant had disability as a result of the compensable left knee injury from December 29, 1999, to the date of the CCH; that the claimant was not barred from pursuing Texas workers' compensation benefits because she elected to receive benefits under a group health insurance policy; that the claimant reported an injury to the employer no later than the 30th day after the injury; and, the respondent/cross-appellant (self-insured) had not waived the right to dispute the compensability of the claimed injury because it timely contested the injury in accordance with Section 409.021.

The claimant appealed the adverse determination that she did not sustain an injury to her lower back on _____, on the grounds of sufficiency of the evidence. The self-insured appealed the adverse determinations regarding compensability of the knee injury, disability, reporting of the injury to the employer and election of remedies on the grounds of sufficiency of the evidence. The self-insured also filed a response to the claimant's appeal urging that the evidence was sufficient to affirm the hearing officer's decision and order that the claimant did not sustain an injury to her lower back on _____. Neither party appealed the determination that the self-insured did not waive the right to dispute the compensability of the claim and it has become final by operation of law. Section 410.169.

DECISION

Affirmed.

The claimant contended that she injured her left knee and lower back on _____, while unloading an 18-wheel truck/trailer. The claimant did not allege that any specific incident caused the injury but stated, in response to whether she had any problem with her knee or back that evening, "oh, that night I hurt so bad. Every square inch of me hurt so bad, I thought I was going to die, but not until I got home . . . well, once I got home and started to relax, then everything started hurting." She testified that she did not notice any problem with her knee until the next morning when she saw that it had become swollen. The claimant asserted that her cumulative lifting, pulling and pushing of loaded pallets on _____, caused the knee to swell and her back to hurt but admitted that she went to work that morning and every day thereafter until December 29, 1999, when she had surgery on her knee. The claimant stated that she returned to work on May 2, 2000, at lighter duties which paid only \$6.00 per hour. The claimant had been making \$9.85 per hour at her job on _____.

The claimant admitted that previously in _____ she injured her left knee and underwent surgery on February 13, 1998, to repair a torn meniscus. She stated that she had been seeing Dr. N for problems with a nerve in her leg after the surgery. The claimant was asked whether her knee hurt prior to _____, and she replied:

Oh, every once in a while. You know, not all the time. It depends on what I did. If I did a lot of, you know—oh, on the days that I had to separate freight or something, when I would go home it would hurt. And then—I mean, in between the two, it would swell, you know, quite a bit here, there, and yonder. It just depended on what I had to do at work.

Later in the hearing, the claimant, in response to questioning as to how she knew what caused her knee to hurt when Dr. C records did not indicate a new injury, stated, “because of the swelling. I mean, it didn’t swell or any—or hurt like it did. I mean, it—I had spells. When I had down-stacked a real big truck, then it would swell and it would hurt.”

The claimant stated that she tried to use her group health insurance benefits for the _____ knee injury but the claim was denied, so she tried to obtain benefits under a claim for workers’ compensation. The workers’ compensation claim was in turn denied so she re-filed under the group health policy and the claim was accepted and benefits paid. The claimant stated that when her left knee became swollen on _____, she tried to file the matter as a workers’ compensation claim, but was told by the store benefits manager that she could not do so because there was no accident and “the rules were the same” as when she sought workers’ compensation for the _____ knee injury. Therefore, she used her group health benefits again. The claimant testified that she knew the injury was work related on _____, and knew that her group insurance was for non work-related injuries. The claimant admitted that she had exhausted her sick and family leave time when she had the prior knee surgery in _____. The claimant stated that she told the drug manager for the store on November 2, 1999, that she had sustained an injury to her knee and back on _____. The managers subsequently testified that the claimant did not claim the recurring pain in her left knee and back as work related until February 2000 when she began having problems with the group health carrier.

The claimant testified that she first sought medical treatment for the left knee and back injury from Dr. C on November 3, 1999. The appointment had been scheduled prior to _____, as a follow-up for her _____ knee injury. Dr. C ordered MRIs for the lumbar and left knee and an EMG/nerve conduction study. The claimant admitted that she had been experiencing problems with her lower back for a number of years and that on March 8, 1999, she had been evaluated for the possibility of S-1 radiculopathy and problems with her sciatica. She stated, “yes, when I do a lot of freight, I get hurt all over. My back hurts from the top to the bottom when I do a lot of heavy lifting. I think that’s called getting old.” The claimant testified that despite having problems with her left knee and back prior to _____, the pain that she experienced after this date was more intense.

Medical records from Dr. C reflect that the claimant had returned to him on January 21, 1998, for complaints of bilateral knee pain (worse on the left) because of the climbing and kneeling she was required to do at work for the employer. Initially, prepatellar bursitis was diagnosed, but a torn medial meniscus was suspected on the left knee. An MRI confirmed a cyst and tearing/fraying of the infra-articular surface of the middle one-third of the medial meniscus. Surgery was performed on February 13, 1998. The operative report reflects that upon examination extensive degenerative changes were found and "it is noted that this meniscus is quite degenerative. . . . It is pretty obvious she has injured this anterior cruciate sometime in the far past but appears to have healed." After surgery the claimant continued to have left knee problems and returned to Dr. C on multiple occasions for further treatment to alleviate the pain in her knee.

By July 6, 1999, the claimant began to present with complaints of lower back pain radiating into her left leg and degenerative disc disease was suspected. A bone scan was performed on July 12, 1999, which indicated findings consistent with arthritis, and an MRI was suggested to correlate the findings. Dr. C stated that the claimant had degenerative arthritis in her knee but he did not believe it to cause her back problems. An EMG on the lower left extremity was performed on July 21, 1999, for complaints of left leg and knee pain. The claimant was found to have a left peroneal sensory neuropathy by Dr. N, who conducted a follow-up examination on August 11, 1999. Conservative treatment was initiated. The claimant returned on September 1, 1999, with the same complaints of left knee pain.

A medical record from Dr. C dated November 3, 1999, reflects that the claimant "continues to have increasing difficulties with this left peroneal palsy. The knee hurts, she is unstable on her feet. She is just miserable." Dr. D referred her to a neurologist and an MRI was ordered. There was no mention in Dr. C's progress note of an incident at work or increased pain on _____.

The claimant presented to Dr. F on November 5, 1999, who, by letter dated November 15, 1999, related that he examined the claimant for complaints of left knee and leg pain. "[Claimant] states that over the last several years she has noted pain in the lower extremity, worse on the left than the right. Last summer she underwent knee surgery with arthroscopy and noted no improvement, and then began noting pain down the lateral aspect of the left leg. . . . Over the last 2 months she has noted pain at the right knee and down the leg as well as up the leg. She notes numbness of the lateral left leg."

On November 15, 1999, a lumbar spine MRI was performed which indicated that the claimant had a disc bulge at L3-4 with no definite herniation and a relatively small left paracentral herniation at L5-S1 mildly indenting the left anterior aspect of the thecal sac. On December 5, 1999, an MRI was performed which demonstrated subchondral cystic degenerative changes at the lateral tibial condyle and severely degenerated medial meniscus probably with a tear in the posterior horn and less severe lateral meniscal degenerative changes anteriorly.

The claimant returned on December 7, 1999, and Dr. C wrote that he was suspicious of a re-torn meniscus. On December 14, 1999, Dr. C noted that the MRI demonstrated a large joint effusion with subchondral cystic degenerative changes at the lateral tibial condyle; and severely degenerated medial meniscus probably with a tear of the posterior horn and less severe lateral meniscal degenerative change anteriorly. He opined that the claimant had profound arthritis. A second arthroscopic surgery was suggested.

The claimant was referred to Dr. E, who examined the claimant on December 7, 1999. Dr. E wrote that “[claimant] complains of pain in the back and in the left leg that she cannot distinguish from the knee pain. She is very physically exertive in her work with trucks and has had back pain before. She believes that after unloading an 18-wheeler about a month ago is when this pain in her left leg and knee got worse. She is to see [Dr. C] again about her left knee problem that she has had for years. She also went to see Dr. F who referred her to our office.” Dr. E wrote that she had examined the MRI and it showed a very small possible lesion which appeared as a small disc protrusion, but was of no clinical significance. Dr. E suggested a rehabilitation program for the claimant's chronic back and knee problems.

On December 30, 1999, the claimant had surgery on her left knee. Upon examination, the medial joint line demonstrated degenerative changes presenting at the medial meniscus in the form of a multi-focal degenerative tear. The articular surface once again demonstrated thinning with fibrillation. An arthroscopic debridement was performed. The post-operative diagnosis was a torn medial meniscus and degenerative arthritis and the final discharge diagnosis after surgery was: (1) multi-focal degenerative tear, medial meniscus and (2) Grade III panarthrosis (arthritis in entire joint).

On January 28, 2000, the claimant was examined by Dr. R upon referral by Dr. C. He noted that the claimant had undergone arthroscopic knee surgery on December 30, 1999. He opined that the radicular pain in her back was not work related because she had back pain on and off for a long time. He wrote that “the patient has had a previous surgery on her left knee. Again, this also was not a work injury. She states that this has gotten progressively worse, necessitating this recent surgery.” He noted that the more physical claimant was at work, the more the pain increased. Dr. R determined that the claimant had mechanically induced low back pain probably due to deconditioning and an asymptomatic disc protrusion that was a small disc lesion with no contact or displacement of the left S1 nerve root. Dr. R also suggested a rehabilitation program.

Dr. C wrote a letter dated June 22, 2000, in which he stated that he believed that the claimant has degenerative disc disease which is a progressive process that takes many years to develop. He did not view it as being the result of any specific incident but rather simply the process of living and aging. He wrote, “[again] I really can't in any fashion connect this up with any specific work injury.” Dr. C filled out a certification for family and medical leave for the claimant on February 24, 2000, which states that her condition commenced on January 21, 1998; that she had multiple clinic visits since January 21,

1998; that the claimant had surgery on February 13, 1999, and December 30, 1999; and that the claimant should not be doing manual labor such as unloading trailers. He wrote "this is a workers' compensation injury."

The claimant was evaluated by Dr. D on March 8, 2000, and was administered an epidural steroid injection on March 15, 1999, for complaints of back pain. The claimant was referred to Dr. Ra, who examined her on May 1, 2000. Per his report the claimant told him that she hurt her back while unloading an 18-wheeler. Dr. Ra diagnosed mechanical back pain.

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). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's 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).

In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could 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).

Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Kathleen C. Decker
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge