

APPEAL NO. 002259

Following a contested case hearing held on August 22, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant's (claimant) compensable _____, injury was a left knee sprain, but did not include the following conditions of his left knee: 1) the laceration of the posterior horn of the medial meniscus with fragmentation; 2) tear of the interior horn of the lateral meniscus; 3) damage of the anterior cruciate ligament; 4) osteochondral abnormality of the posterolateral femoral condyle; and 5) joint effusion. The hearing officer also determined that the claimant had not sustained disability from the compensable injury. The claimant appeals, arguing that the evidence established that the claimant's injury extended to include the areas in question and that the claimant had disability as a result of his injury. The respondent (carrier) replies that the decision of the hearing officer was supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

It was undisputed that the claimant injured his left knee in 1998 in a nonwork-related accident and was treated by Dr. R who diagnosed a torn anterior cruciate ligament with bilateral meniscus tear. Surgery was performed on the claimant's knee in November 1998, and Dr. R added chondral damage to the lateral femoral condyle to the postoperative diagnosis. The claimant had a second knee surgery in June of 1999. The claimant began treating with Dr. M in August 1999 and at that time was complaining of left knee pain and swelling. Dr. M's diagnosis was mild tricompartmental arthritis, anterior cruciate ligament deficiency and probable grade III articular changes of the lateral femoral condyle. Dr. M began conservative treatment and noted that if this did not prove successful a third surgery might be necessary. The claimant had an MRI of his left knee performed on September 25, 1999. The claimant returned to work in September 1999 and testified that he tripped and fell on his knees at work on _____. The claimant had a follow-up MRI on October 22, 1999, and Dr. M performed surgery on the claimant's left knee in November 1999. The claimant testified that he injured his left knee on _____, and as a result had disability.

The hearing officer found that the claimant's injury of _____, was compensable but was a minor left knee sprain that did not result in internal derangement of his left knee or disability. The claimant argues that this is contrary to the evidence and at the minimum he suffered an aggravation of his left knee condition as the result of his _____, injury which resulted in disability.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact,

is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard of review, we do not find that the overwhelming evidence was contrary to the finding of the hearing officer that the claimant's injury did not extend to the laceration of the posterior horn of the medial meniscus with fragmentation; the tear of the interior horn of the lateral meniscus; the damage of the anterior cruciate ligament; the osteochondral abnormality of the posterolateral femoral condyle; and the joint effusion. It is axiomatic that the employer takes the employee in the condition in which the employer finds him and that the aggravation of a preexisting condition is itself compensable. However, the claimant still bears the burden of proving the extent of a compensable injury. In the present case, we do not find that the hearing officer failed to apply the correct legal standard or that the overwhelming evidence is contrary to his factual determinations. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Again, the claimant bears the burden of establishing that a compensable injury was a producing cause of his disability. While there was evidence of this in the record, it was still the province of the hearing officer to weigh this evidence and to determine its credibility. Under the facts of this case, we do not perceive error in the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge