APPEAL NO. 002286

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 August 17, 2000. The issues at the CCH concerned the causal connection of various conditions in the appellant's (claimant) left knee, which led to surgery in January 2000, to his original compensable knee injury of _____. There were related issues concerning whether the respondent (carrier) had newly discovered evidence upon which to reopen the issue of compensability, and whether the claimant had disability relating to the compensable injury.

The hearing officer considered the evidence and determined that the claimant's torn meniscus and chondral fracture of the left knee, conditions leading to surgery, related from falling onto his left knee on April 2, 1999. She determined that the carrier had proven that it had newly discovered evidence that could not reasonably have been discovered earlier (the April 2, 1999, fall) upon which to reopen compensability. She further found that although the claimant was not able to work after his surgery, this was not due to the effects of his compensable injury of _____.

The claimant has appealed, arguing that the carrier accepted "internal derangement" of the knee and had no basis upon which to reopen compensability of the left knee injury. The claimant has also argued that the evidence plainly showed (with no or insufficient evidence proving otherwise) that his surgical knee condition was related to, and caused by, his _____, accident and caused compensable disability. The carrier responds that the decision of the hearing officer was correct on all appealed issues, and that the claimant did not meet his initial burden of proof of connecting his surgical condition to his original injury.

DECISION

Affirmed.

The hearing officer has fully summarized the pertinent record, and we will incorporate that by reference. The claimant injured his left knee and ankle when dirt caved in and partially buried him while he was assisting with hooking up a sewage line to a customer of his (employer). As the hearing officer noted, objective testing at this time diagnosed a strain and sprain of the left knee. The claimant said he was treated with therapy and put on crutches. Although he was treated by Dr. A and Dr. D, his primary treating doctor became Dr. C, a chiropractor, on March 2, 1999, upon referral from his previous attorney. According to the claimant, his primary treatment for his knee and ankle was work hardening therapy. A February 5, 1999, MRI was reported as normal without evidence of any tear in the ligaments.

Dr. C's first narrative report noted that the claimant reported pain at an 8 on a 10 scale. He indicated that the claimant's medical condition was not stationary at that time.

Dr. C recommended an MRI of the claimant's left foot. Dr. C's April 30, 1999, report indicated that the foot MRI was normal. He also stated that when the claimant came for his regular Friday examination the previous Friday, when Dr. C's office was closed, the claimant had fallen onto his left knee due to slipping on a wet step. The claimant testified that he had actually related to Dr. C the account of the accident as he stated at the CCH: that he slipped in the rain on a small step, and fell backwards onto his rear end, with no contact being made to his left knee. The notes of his therapy show an improvement of his symptoms by April 6, 1999, but then an increase in his pain by April 9, and then improved again by April 13. Most of the periodic therapy notes record the claimant reporting that he feels essentially the same, with "noticeable improvement" by April 26.

We note that Dr. C's April 30, 1999, report also observed that after a seven-week course of therapy, the claimant had reported that his knee pain was decreased to a 2 on a 10 scale and an occasional three in his left foot. The claimant was treated on an orthopedic consulting basis by Dr. K, both before and after the claimant's incarceration.

Records in evidence from Dr. K are sparse. On April 9, 1999, Dr. K observed that the claimant's ligaments were strained and pulled and his MRI was essentially unremarkable. On November 1, 1999, Dr. K noted that an MRI of the claimant's left knee and his left foot failed to show any bony abnormality of the knee, and supporting ligaments were intact with no evidence of tearing. Further therapy was suggested. Although the claimant denied that he had any MRI after his earlier knee and later left foot MRIs, Dr. K definitely recorded on December 21, 1999, that an MRI showed that the claimant had a fracture of the left ankle and a torn left medial meniscus. At this point, he recommended surgery.

The claimant was examined by a doctor for the carrier, Dr. F, on December 1, 1999. While Dr. F appeared to agree that the claimant had the signs of a torn meniscus, the record was only favored with a partial copy of this letter, put into evidence as a claimant exhibit.

The claimant was incarcerated from June through October 1, 1999. He contended he received no medical treatment during this time, essentially just stayed in bed due to pain, and did not work or have any other accident involving his left knee. The claimant immediately resumed treatment with Dr. C after his release and was again put back through therapy. It was the claimant's contention that there were no other incidents preceding or occurring subsequent to the _____, cave-in that affected his left knee and ankle.

We agree with the hearing officer that notice to the carrier of another incident in which the compensable body part may have been injured again, or differently, constitutes a sufficient basis upon which to reopen compensability based upon newly discovered evidence. While there is no 60-day time period for reopening compensability, the hearing officer evidently considered that the carrier had reacted fairly promptly to reopen compensability once it found out about the new fall from Dr. C's report of April 30, 1999,

which it received on May 28, 1999, and disputed within two weeks. Although there appears to have been a belated activation of the filed dispute, the hearing officer's determination that there was a basis for reopening compensability is sufficiently supported by the record. We cannot agree that notice of a condition soon ruled out constitutes notice of a condition triggering a dispute, but even if it did, that would not preclude reopening compensability based upon evidence of new and relevant information affecting the compensability of accepted conditions that could not reasonably have been discovered within the initial 60-day period.

We do not necessarily agree that the hearing officer found that the April 2, 1999, fall was the "sole cause" of the subsequent torn ligaments. Rather, it is clear from reading her report that she believed the somewhat sudden diagnosis of torn ligaments in December, a month after comparative normalcy was recorded, was not explained by the _____, incident. She was not bound to believe Dr. C's somewhat conclusory statements that the surgery related back to the consequences of the cave-in. She was not bound by the claimant's testimony that there were no other occurrences affecting the knee. We cannot concur with the claimant that there is either no, or insufficient, evidence to support the hearing officer's decision on the matters appealed.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here. Because the additional conditions were not found to be part of the compensable injury, the period of time that the claimant was off work due to the

effects of his surgery does not constitute "disability" as defined in the 1989 Act. We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge