

APPEAL NO. 002360

Following a contested case hearing held on August 3, 2000, with the record closing on September 14, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the respondent's (claimant) compensable injury extends to the diagnosis of a torn meniscus in the right knee. The appellant (carrier) has appealed this determination on evidentiary sufficiency grounds. The claimant's response details the evidence she views as sufficiently supportive to warrant our affirmance.

DECISION

Affirmed.

The hearing officer's Decision and Order contains a detailed recitation of the evidence with which neither party takes issue. Accordingly, only such evidence as is necessary to support our decision will be set out.

The parties stipulated that the claimant sustained a compensable injury on _____, and the carrier does not dispute the finding that on that date the claimant was struck by a valve on the right leg in the knee area. The claimant testified that in March 1999, she underwent surgery on her right knee and that while her surgeon, Dr. BB, had suspected before the operation that she had a torn medial meniscus, he discovered during the surgery that she did not and he repaired the damage he did find. She said she returned to work in May 1999, performing light duty; that in August 1999, she was released to her regular duties as a process technician at a petrochemical plant; and that, except for a trip-and-fall accident in September 1999, which did not result in her losing time from work, she performed her work, which involved a lot of climbing, bending, and stooping, without any difficulty with her right knee. The claimant further testified that on _____, a piece of pipe with a gate valve at the top, which weighed approximately 75 pounds and which was being removed by contractors, fell and struck her right thigh just above the knee towards the right side; that she heard her knee "pop" as she turned to try to get away; and that she immediately felt severe pain in her right knee. She said she was taken to a medical center emergency room (ER); that she had discoloration and swelling in the area where the valve and piping struck her; that she has been subsequently followed for her right knee injury by her surgeon, Dr. BB; that she has been determined by MRI testing to have a torn medial meniscus; and that she has not been able to undergo the necessary surgical repair because the carrier has disputed that her right leg injury extends to the torn medial meniscus.

Dr. B, the employer's doctor at the plant, testified that he saw the claimant several times after she was released from the ER and that his assessment was that the claimant had a contusion but not a torn meniscus because he observed no swelling or effusion of the knee. He explained that had the claimant's knee been struck with sufficient force to tear the meniscus, swelling would be expected. He also said that his chart revealed that

the claimant sustained an abrasion of her right leg and knee on September 13, 1999, when she tripped and fell, and that she complained of her right knee's popping on September 14 and on November 12, 1999. Dr. B later testified that he agrees with Dr. BB and with Dr. S, to whom he had referred the claimant, that the claimant probably has a torn meniscus and he agrees that the records now reflect that the claimant's March 1999 surgery did not include the repair of a torn meniscus. He also agreed that according to the records both the doctor in the ER and Dr. BB felt that the claimant did have swelling in her knee; however, he stated that this information does not change his opinion. The ER physician record has circled "joint effusion/swelling." The ER records also reflect that the diagnosis was knee contusion and sprain and that the claimant was released with a knee immobilizer and crutches.

Mr. R, the claimant's supervisor, testified that he was called to the scene of the claimant's accident on _____, soon after it happened and that, when he realized the pipe and valve had struck the same knee that the claimant had earlier had surgery on and that she said she had heard the knee pop, he decided to call for an ambulance and then accompanied her to the ER. Mr. R further stated that when the ER personnel cut the claimant's pants leg up to expose the knee, he saw some swelling and discoloration.

In support of the conclusion that the compensable injury extends to the claimant's diagnosis of torn meniscus of the right knee, the hearing officer found that the claimant had a prior knee injury in 1999 and that surgery was performed; that she did not have a torn meniscus from that injury; that she subsequently returned to work without any significant problems with her right knee; that the previous 1999 injury was not the sole cause of the internal derangement and torn meniscus; and that the internal derangement noted in the MRI was a result of the compensable injury of _____.

The claimant had the burden to prove that her knee injury of _____, extended to the torn meniscus. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer's discussion of the evidence comments on some of the conflicts in the evidence, particularly with regard to the presence of swelling in the knee after the injury, and explains how she resolved such conflicting evidence in the claimant's favor. This record does not provide the Appeals Panel with a basis to reverse the decision

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge