

APPEAL NO. 002382

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 26, 2000. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury in the form of a contusion to the right knee on _____. The hearing officer determined that the compensable injury did not accelerate, enhance, or worsen the claimant's preexisting right knee osteoarthritis and that he did not have disability. The claimant appealed; stated evidence favorable to his position; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the compensable injury did accelerate, enhance, or worsen his preexisting osteoarthritis and that he had disability beginning March 6, 2000, and continuing through the date of the hearing. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant painted furniture for the employer as it was suspended from a conveyor belt. The claimant testified that on _____, an oval table that weighed about 52 pounds fell and struck his right knee; that his knee immediately became swollen; that he went to a company doctor and later to Dr. H; and that Dr. H replaced his right knee on March 15, 2000. The claimant said that he had his left knee replaced in 1994, but stated that he did not have any problems with his right knee before it was struck by the table in _____.

The claimant contended that the blow to his right knee aggravated a preexisting arthritic condition. The carrier contended that the blow to the knee resulted in a contusion and that the claimant had recovered from the contusion. The claimant was seen by Dr. S in November, December, and January. In a report dated January 31, 2000, Dr. S stated that the diagnosis was contusion of the right knee with arthritis; that he advised the claimant that his symptoms from the contusion had resolved; that the claimant insisted that he was walking normally before the incident; that he has a left knee implant and cannot bend it more than 30 degrees in flexion; that x-rays show severe arthritis in his knee; and that he advised the claimant that there will be very few days that he can walk normally.

Dr. H performed the knee implant in 1994. He reported that the claimant had menisci tears that resulted from a July 1993 accident, but that the replacement of the left knee was related to preexisting degenerative changes in the knee joint. In a letter dated April 6, 2000, Dr. H wrote:

[Claimant] has been working in a standing/walking/bending position for an extended period of time. His work place had already agreed that his left and right knees were osteoarthritic associated with work. They agreed to his left

knee replacement surgery, which was performed back in 1994, and it was covered at that time. They also agreed to his previous arthroscopy surgeries on his knees as a covered workman's compensation injury. For them to now say that they are not work related after all these years seems quite questionable.

As far as his right knee is concerned, he is doing well with that. The left knee has developed myositis ossifications, which is a postoperative complication that can occur. It has taken him five to six years to develop that on the left knee. It has progressively limited his range of motion, and now the myositis is going to have to be taken down or have the knee revised.

I think that this should be covered under workman's compensation because they covered the original surgery and this is a continuation of that original problem and original surgery from 1994.

In a letter dated April 7, 2000, Dr. H said that the claimant's injury did not result from sitting in his chair and that the injury occurred when a table fell and hit the claimant's knee.

The burden is on the claimant to prove by a preponderance of the evidence the extent of an injury, Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994, and that he had disability, Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. 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 evidence. 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). The hearing officer's determinations that the compensable injury did not accelerate, enhance, or worsen the claimant's preexisting right knee osteoarthritis and that he did not have disability are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and are affirmed. 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 the order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge