

APPEAL NO. 002393

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 September 18, 2000. With regard to the only issue before him, the hearing officer determined that the appellant's (claimant) compensable low back and right wrist injury of _____, does not extend to nor include her right knee.

The claimant, in her appeal, reiterates the mechanics of her compensable fall, asserting the fall caused injuries to her low back, right wrist (accepted by the respondent (carrier) and right knee, and that her knee has continued to get worse. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The carrier urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back and right wrist injury on _____. There was substantial testimony on exactly how this injury occurred and many of the voluminous medical reports give slightly differing versions. The hearing officer, in his Statement of the Evidence, recited the following version, which is supported by the evidence:

Claimant squatted down in front of a cassette tape rack on _____ to pick up a tape and put it back in the rack. She testified that when she squatted, her right knee gave out and she fell backwards onto the floor, landing on the right side of her body. She instinctively put out her right arm to try to break the fall, but her wrist folded when her hand hit the floor. She stated that she ended up on the floor lying on her right side, with her right hand under her right leg and knee.

None of the contemporaneous medical records of 1996 mention complaints of a right knee injury. Subsequent testimony at the CCH developed that the claimant has had problems with her right leg "giving way" since around 1990. The claimant testified that this giving away would occur more than once or twice a year and less than once a month. The claimant had falls in 1993 and 1995, apparently due to her leg giving out. However, it was not until September 1999 that the claimant began to allege that her compensable injury of _____ included a right knee injury. Even then, notations regarding a knee injury are unspecific. Dr. S, the claimant's treating doctor, in a report dated June 1, 2000, writes that the claimant "presents for follow up on her low back and right knee She reports that her leg and knee are in great pain." That report notes tenderness over the right lateral meniscus and recommends an MRI.

The claimant contends that Dr. J, the carrier's independent medical examination doctor, diagnosed a knee injury. Dr. J had several reports of 1996 without mention of a

knee injury; however, in a report dated November 29, 1999, notes complaints of “right knee and leg pain” and “subjective tenderness to palpation over the right knee . . . “ Dr. J comments “[r]ecent xrays of the knee are not remarkable.” No further testing or treatment was recommended.

The hearing officer, in his Statement of the Evidence, commented:

Although the incident occurred in _____, it was September 1999 before the Claimant sought medical treatment specifically for the right knee. The medical exhibits from February 1996 through August 1999 were devoid of specific references of any injury to or such symptoms of the right knee. As the Claimant testified, she had had problems with her right knee giving way since 1990.

While the Claimant contended that her incident in _____ caused her to sustain a knee injury, the medical evidence showed that the knee injury did not occur on _____. It had occurred about six years earlier. The medical evidence was insufficient to show that the _____ incident aggravated her 1990 knee injury to the level of constituting a new injury. The Claimant did not report to any doctor any specific knee problem or symptoms, other than maybe a passing reference, until three and a half years after her compensable injury.

The claimant, in her appeal, argues that the mechanism of the injury showed how the fall “caused damage to the right leg and right knee.” We disagree and only note that whether the mechanism of a fall produces an injury is strictly a factual determination for the hearing officer, as the sole judge of the weight and credibility to be given to the evidence, to resolve.

The claimant also contends that a medical report dated February 13, 1996, from Dr. S “recommended a cane because of the right leg giving out” The referenced report discusses the claimant's fall “when her right leg gave way,” the claimant's low back and right wrist injury, and the fact that the claimant “walks carefully and has considered using the cane because of this give away episodes.” Dr. S recommended “she may use a cane for safety in walking.” Nothing in that report suggests that the claimant sustained a right knee injury due to the _____ fall.

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge