

APPEAL NO. 002439

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 11, 2000, with the record closing on September 22, 2000. The issue at the CCH was whether the respondent's (claimant) original compensable injury to his right knee extended to two other conditions: an oblique tear of the posterior horn of the medial meniscus and a large displaced tear of the lateral meniscus. The hearing officer held that these conditions were related, and the appellant (carrier) has appealed, arguing that this decision is against the great weight and preponderance of the evidence. The claimant responds that the fact findings of the hearing officer should not be set aside.

DECISION

We affirm.

The claimant, a man in his late thirties, fell from a scaffold on _____, and injured his right knee. An MRI taken on October 16, 1999, noted an apparent isolated tear involving the anterior horn of the lateral meniscus. The remainder of the lateral meniscus was noted to be intact as well as the medial meniscus. The claimant said he never had problems with his right leg prior to this accident.

Dr. W, the claimant's surgeon, issued a very short operative report. The post surgical diagnosis was "torn lateral meniscus right knee with medial plica." His report indicated expressly that the medial meniscus and anterior cruciate ligaments were both normal to visualization and probing. There was no significant chondromalacia or arthritic changes. A medial plica was resected.

A March 8, 2000, report from Dr. W noted that as of March 6, the claimant was still hurting a lot, with pivoting, but had good range of motion and motor strength. This report noted that the claimant had a fair to good prognosis, but he was released to normal activity effective March 13. The claimant noted that he was released to full duty by Dr. W, worked one day without problems doing a lot of standing, and then had pain and swelling starting on the second day. He only worked three days and stopped due to pain. He said that the employer would not give him light duty because he had a full-duty release. The claimant said Dr. W told him he was all right. The claimant went instead to see Dr. N, a chiropractor.

A second MRI taken March 22, 2000, was reported as showing some posttraumatic bursitis, scar tissue and sequelae of the previous surgery, tendinitis and tenosynovitis, mild Grade I and II chondromalacia, no recurrent tear but postoperative changes in the lateral meniscus, and postoperative changes in the medial meniscus from what is characterized as the partial meniscectomy, with an oblique linear tear. There was also a two-centimeter Baker's cyst "which might be communicated with the partially torn posterior horn/body portion of the medial meniscus." Another MRI on May 23, 2000, found an additional

"extensive tear" of the anterior horn of the lateral meniscus (the site of previous surgery). There was moderate to high-grade chondromalacia.

The claimant began treatment with Dr. N on March 17, 2000, and at that time Dr. N included diagnoses related to the lumbar spine and left knee, where he urged that a meniscal tear in that knee be ruled out. Dr. N's physical examination of both knees indicated more pain in the left than right. Dr. N's June 12, 2000, report stated that the claimant had been out of town, but continued to have right knee pain and a palpable Baker's cyst. Dr. N stated that the torn meniscus in the right knee was related to the _____, injury. Dr. N apparently referred the claimant to Dr. J, a medical doctor, who wrote on June 19, 2000, that the claimant's right knee problems were "obviously" related to his _____ injury. However, Dr. J stated that he did not have Dr. W's operative report from the previous surgery. Dr. J performed a second right knee surgery on July 26, 2000. Prior to this, the claimant underwent physical therapy which did not result in improvement.

Dr. R, a chiropractor, examined the claimant on June 28, 2000, prior to his second surgery, in an independent medical examination. Dr. R said that the medial meniscus tear was not related to the claimant's original injury, but may have occurred during therapy or his return to work. The claimant said this examination lasted about 45 minutes. In an August 29, 2000, letter, Dr. R said that he compared the first MRI to the March 2000 MRI and that there were new conditions on the second MRI.

The claimant said he had much improvement from his second surgery. He said there were no activities at home in which he was involved that would have caused injury to his knee after his accident.

The hearing officer's sole unstipulated finding of fact on the issue reads:

The condition(s) of the Claimant's right knee, including an oblique tear of the posterior horn of the medial meniscus and a large displaced tear of the lateral meniscus, were caused or aggravated by, and/or naturally resulted from, his _____ injury.

This finding is somewhat internally inconsistent, in that it says both that the disputed injuries occurred or were aggravated on _____, and/or manifested afterwards as a natural result of that injury. As to whether the injuries were caused or aggravated on _____, the evidence, most significantly the MRI report and the operative report of Dr. W, is directly contrary to this. The medial meniscus was untornd and normal, both upon MRI and subsequent inspection by Dr. W during surgery. The anterior lateral meniscus tear at that time was repaired. As Dr. R noted in his review of both MRI reports as reported by the radiologist, the conditions shown on the second MRI were new ones, not present immediately after the injury.

However, the decision for the claimant may be affirmed if the evidence supports the second part of this fact finding, that his disputed diagnoses "naturally resulted from" his earlier injury. We are concerned that when Dr. J stated unequivocally that the claimant's problems were "obviously" related to the _____, injury, he did not have Dr. W's operative report. Nevertheless, as we review the medical evidence as a whole as well as the claimant's testimony about his return to work, and Dr. W's report indicating that the claimant still had considerable pain upon pivoting on March 6, 2000, it is clear that by the time of the second and third MRIs there were many conditions existent in the knee as well as the disputed conditions that were degenerative or related to the previous surgery (such as chondromalacia or the two-centimeter Baker's cyst). The hearing officer could be persuaded that the later interior environment of the knee was a process initially set in motion by the _____ injury and the invasive surgery for that condition. We are not therefore prepared to conclude that the hearing officer's determination that the medial meniscus and subsequent (recurrent) lateral meniscus tears naturally resulted from and are therefore part of the _____, injury is so against the great weight and preponderance of the evidence so as to be manifestly unfair or unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We accordingly affirm the hearing officer's decision and order to the extent that it finds that the claimant's subsequent right knee injuries naturally resulted from his initial injury.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge