

## APPEAL NO. 002559

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 October 10, 2000. With regard to the only issue before her, the hearing officer determined that the respondent's (claimant) compensable injury is "a producing cause of the chondromalacia of the left patellofemoral joint and subluxing patella of the left knee after October 11, 1999."

The appellant (carrier) appealed, contending that the hearing officer's use of a "producing cause" analysis was in error and that the claimant sustained a new injury in \_\_\_\_\_. The carrier requests that we reverse the hearing officer's decision and render a new decision in its favor. The claimant responds, essentially urging affirmance.

### DECISION

The hearing officer's decision is affirmed.

It is undisputed that in 1992 the claimant had been employed by the (employer 1) working with elderly people and was injured when she slipped, hitting her left knee on a bathtub while working in the home of an elderly client. The parties stipulated that the claimant sustained a compensable left knee injury on \_\_\_\_\_. The claimant saw a number of doctors in 1992. She was eventually referred to Dr. De, who became her treating doctor. The claimant underwent arthroscopic left knee surgery on July 1, 1992, and postoperatively underwent rehabilitation but continued to have pain and problems with her left knee. The claimant had an MRI of the left knee on November 5, 1993, and eventually had "a second diagnostic arthroscopy by [Dr. De] on 5/04/94 with lateral retinacular release." The claimant was found to be at maximum medical improvement on September 1, 1994.

Dr. De left his practice and moved to another state and the claimant began seeing Dr. P in November 1995 with complaints of "ongoing patellofemoral arthritic pain and patella alta (subluxing patella)." (Dr. D report of August 3, 2000.) The claimant continued working various jobs and returned to see Dr. P in May 1997 "with continued complaints of knee pain" (Dr. D's report). Dr. P, in a report dated June 10, 1997, related the claimant's complaints back to her 1992 injury "which is a subluxing patella." A repeat MRI of the left knee was performed in January 1998 "which showed ongoing arthritic changes but no evidence of any frank tear."

The claimant began working for (employer 2) on July 21, 1998, as a meter reader. The claimant testified that she was apprehensive about the required walking of the meter reader job but was encouraged by Dr. P to try it. The claimant testified that the meter reader job required her to walk 10 to 15 miles a day stepping up and down over curbs. The claimant again saw Dr. P on March 26, 1999, for a follow-up exam which showed some improvement but "continued subluxing patella" complaints. The claimant testified that her

left knee began getting worse and that she returned to see Dr. P on October 11, 1999. In a progress note of that date, Dr. P commented that the claimant's "knee is flared up where it is swollen in the patellofemoral joint." Dr. P's assessment was osteoarthritis of the patella. The claimant filed a Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) alleging a new injury in \_\_\_\_\_ on November 2, 1999. That claim was denied based on a "med. report from [Dr. P] . . . [blotted out by stamp] prev. work related injury dated 05/27/92 . . . ." The claimant then asked for medical benefits under her 1992 compensable injury.

Dr. P, in a note dated May 15, 2000, stated "that the pain in her knee all started back in 1992." Dr. D was appointed as a Texas Workers' Compensation Commission (Commission) required medical examination (RME) doctor and in a comprehensive report dated August 3, 2000, recited the claimant's medical history, assessed chondromalacia of the left patellofemoral joint with ongoing arthritic pain and persistent subluxing patella of the left knee (patella alta) and commented:

I don't feel that the injury of 10/11/99, i.e., persistent walking, has caused any new symptoms to have occurred. All of her symptoms are due to progressive deterioration of the left knee joint from the 5/26/92 injury and this is well documented in both [Dr. De's] and [Dr. P's] office notes. The patient had similar exacerbations of her knee pain prior to the 10/11/99 incident that were essentially unchanged from her current complaints. This is consistent with progressive left knee arthritic pain and dysfunction from a subluxing patella which are both due to the \_\_\_\_\_ injury.

The carrier requested a record review by Dr. B, who in a report dated June 27, 2000, concluded:

The claimant had a contusion to the anterior aspect of her left knee. This lesion appeared to heal, but the claimant has had symptoms due to a laterally subluxing patella (bilaterally). This was not due to the contusion in \_\_\_\_\_ and further care does not appear to be medically reasonable and necessary as a result.

The hearing officer, in an appealed finding, determined:

#### **FINDING OF FACT**

2. After October 11, 1999, Claimant's chondromalacia of the left patellofemoral joint and subluxing patella of the left knee are directly related to or are the natural result of Claimant's \_\_\_\_\_ compensable left knee injury.

The carrier appealed, contending that the hearing officer erred in relying on a "producing cause" analysis. We disagree. The issue was developed at the benefit review

conference. The carrier did not submit a response to the issue as stated and only raised it for the first time at the CCH. The compensable injury need only be a producing cause of the current claimed condition, not the sole cause. In the case that the carrier cites, the Supreme Court held that it was within the trial court's (hearing officer in this case) discretion in refusing to submit a causation issue in terms of "a producing cause." Even if, as the carrier contends, the issue should be framed in terms of "resulting from" the hearing officer's determination "directly related to" would conform to the resulting from language.

In any event, the evidence was conflicting with Dr. P and Dr. D, the Commission's RME doctor, stating that the claimant's condition was the result of the 1992 compensable injury and Dr. B, in a record review saying the contrary. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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).

Upon review of the record submitted, we find no reversible error. 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.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Kathleen C. Decker  
Appeals Judge

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Robert W. Potts  
Appeals Judge