APPEAL NO. 002612

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 23, 2000. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes a low back injury and that the claimant's average weekly wage (AWW) is $840.00. In its appeal, the appellant (carrier) asserts error in each of those determinations. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to his right knee on _____, when in the course and scope of his job as a mechanic, he slipped in grease on the floor and fell, landing on his right knee. The claimant stated that his low back hurt on the day of the injury and that his pain has gotten progressively worse due to his walking with a limp. Dr. R, one of the claimant's treating doctors, has diagnosed the claimant with "secondary mechanical low back pain from the problems originating in his knee." Dr. R further opined that the claimant's fall at work "was a direct cause of his low back pain and his knee pain." Dr. H, a chiropractor, another of the claimant's doctor's, opined that "[w]ith reasonable medical probability, the patient's right knee and low back injury is a result [of] the work-related accident that occurred on 8/6/97." Dr. H explained that the claimant walks "with an antalgic limp due to decreased function of the right knee" and that this "factor in itself can lead to biomechanical changes of the low back region which resulted in biomechanical dysfunction and pain to the lumbar spine."

The carrier introduced a narrative report from Dr. M, the designated doctor, stating that he did not assign a rating for diagnosis-related impairment in the claimant's lumbar spine because no imaging studies of the lumbar spine were performed documenting a ratable soft tissue injury. In addition, the carrier introduced a report from Dr. S, who performed a records review. Dr. S stated that the "records fail to establish that the lower back condition as causally related to the accepted industrial injury . . . ."

On the issue of the AWW, the claimant testified that he was paid $17.50 per hour; that he was paid for an average of eight hours per day; and that he worked six days per week. He stated that the garage where he was working as a mechanic at the time of his injury was very busy and that he would have been able to continue working eight hours per day, six days per week had he not been injured. On cross-examination, the claimant stated that his last check, which was for $450.75, was not an accurate statement of his AWW, because it was for work he performed in the days he attempted to continue working following his injury and that he was not able to keep up his usual pace. The claimant did not work for the employer for 13 weeks prior to his injury. The carrier did not produce a wage statement from the employer for the claimant or for a similar employee.

The evidence was sufficient to support the determinations that the claimant's compensable injury of _____, extends to and includes an injury to his low back. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where, as here, there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determinations are not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Reviewing the extent-of-injury determination under that standard, we find no sound basis to disturb that determination on appeal.

Next, we briefly consider the carrier's challenge to the hearing officer's determination that the claimant's AWW is $840.00. As noted above, the carrier did not offer a wage statement for the claimant or a wage statement for a same or similar employee. Given its failure to do so, we find no merit in the assertion that the hearing officer erred in turning to the fair, just, and reasonable method to determine the claimant's AWW. The hearing officer was acting within her province as the fact finder in accepting the claimant's testimony that he was paid for an average of eight hours per day, six days per week, at a rate of $17.50 per hour, particularly given the dearth of contrary evidence from the carrier. Based on the claimant's testimony, which the hearing officer was privileged to accept, the claimant's AWW is $840.00. Nothing in our review of the record demonstrates that the AWW determination is so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge