

APPEAL NO. 002665

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 23, 2000, a contested case hearing was held. The hearing officer decided:

1. The claimed injury was not caused by the claimant's wilful intention and attempt to injure herself, therefore, the appellant's (carrier) is not relieved of liability for compensation;
2. The carrier waived the right to contest compensability of the claimed injury by failing to timely dispute the injury in accordance with Section 409.021;
3. The compensable injury of \_\_\_\_\_, does extend to and include the right medial meniscus tear; and
4. The claimant had disability resulting from the injury sustained on \_\_\_\_\_, from October 6 through October 26, 1999, and from December 15, 1999, through July 18, 2000.

The carrier appealed. No response was received from the claimant.

DECISION

The hearing officer's decision is affirmed.

The claimant testified that on \_\_\_\_\_, while performing her work duties for the employer, she turned while lifting a heavy box and felt severe pain in her right knee and fell to the floor. The claimant underwent surgery in January 2000 for a dislocation of the right patella. The parties stipulated that the carrier did not dispute the claimed injury of a patella dislocation within 60 days of receipt of notice of the injury. Dr. G, the claimant's treating doctor, diagnosed the claimant as having a torn right medial meniscus, which he opined in all medical probability is directly related to the claimant's work injury of \_\_\_\_\_. Dr. S reviewed the claimant's medical records at the carrier's request and testified that the patella dislocation is not related to the claimant's work accident of \_\_\_\_\_; that the claimant does not have a torn medial meniscus; and that, if the claimant has a torn medial meniscus, it is not related to her work accident of \_\_\_\_\_.

There is conflicting evidence in this case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer's determinations in favor of the claimant are supported by sufficient evidence and are not 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 (Tex. 1986).

Contrary to the carrier's assertion, the hearing officer decided that the claimant did sustain a compensable injury and that the claimant's current condition, a torn right medial meniscus, is part of the compensable injury. The hearing officer found against the carrier on its contention that it had newly discovered evidence upon which to reopen the issue of compensability that could not reasonably have been discovered earlier. Whether the carrier had newly discovered evidence that could not reasonably have been discovered earlier was a factual determination for the hearing officer to make based on the evidence presented. We conclude that reversible error has not been shown in the hearing officer decision.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge