

APPEAL NO. 002949

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 21, 2000, a hearing was held. The record was closed on November 30, 2000. The hearing involved two claim files, a right knee injury sustained by the respondent (claimant) while employed with (employer 1)(not at issue here); and, the above-referenced and numbered claim for a second, alleged right knee injury sustained on _____. The carrier for employer 1 is respondent carrier 1. The employer at the time of the alleged _____, injury was (employer 2) who had workers' compensation coverage with appellant (carrier 2). The hearing officer found that the claimant sustained a new injury on _____, and had disability resulting from that injury. Carrier 2 appealed, asserting that the hearing officer's decision is against the great weight of the evidence. The claimant and carrier 1 responded that the hearing officer's decision and order are supported by the evidence and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

Carrier 2 asserts that the hearing officer's determinations that the claimant sustained a new injury on _____, and that the claimant's prior injury of February 1999 is not a cause of the claimant's right knee problems after _____, are so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

There was conflicting evidence adduced at the hearing. The claimant offered documentation from his treating doctor, Dr. I. The documentation set forth Dr. I's opinion that MRIs taken in July 1999 and December 1999 demonstrate new and additional damage to the claimant's right knee, which Dr. I attributes to the claimant's injury of _____.

Carrier 2 offered the opinion of Dr. T that the changes noted in the MRIs of July and December 1999 were the result of degenerative changes, not an injury whose mechanism was described as the claimant's "hitting or scraping his knee against something in the shop." While the description of the injury given to Dr. T is that contained in the Employer's First Report of Injury or Illness (TWCC-1), it is distinctly different from the mechanism of injury described by the claimant and reflected in Dr. I's records. The claimant testified that, as he was using an overhead crane to lift a large plate of steel, he stepped on a piece of steel laying on the ground and twisted his knee. In his report to carrier 2, Dr. T stated:

There does not appear to have been any documented injury mechanism, **such as a twisting injury** or other injury mechanism, that would have at all possibly resulted in the change in the MRI scans between 7/99 and 12/99. [Emphasis added.]

On the issue of disability, carrier 2 asserts that the claimant was able to obtain employment after he was terminated by employer 2 and failed to prove disability after

leaving employer 2. The claimant testified that he obtained work as a mechanic's helper, but was unable to retain that employment because of the right knee injury.

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 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 we determine, as we do here, that his 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.

The hearing officer's decision and order are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge