

APPEAL NO. 010227

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 10, 2001, the hearing officer resolved the disputed issue by determining that the respondent's (claimant) compensable injury of _____, does not include aggravation of the left tibial plateau fracture but does include posttraumatic degenerative arthritis of the left knee that now requires a total knee replacement. The appellant (carrier) has appealed on evidentiary sufficiency grounds the determination concerning the compensability of the posttraumatic arthritis. The claimant's response urges the sufficiency of the evidence to support an affirmance.

DECISION

Affirmed except for the determination that the claimant's injury requires total knee replacement.

The claimant testified that prior to his left knee injury at work on _____, he had four prior injuries to that knee and had twice undergone surgery on the knee. Though not stipulated, the carrier represented below that it accepted a torn medial meniscus injury to the left knee with a date of injury of _____. The hearing officer did not err in determining that the claimant's compensable injury of _____, includes posttraumatic degenerative arthritis of the left knee. The medical evidence was in conflict on the issue. Dr. B, who examined the claimant at the request of the Texas Workers' Compensation Commission (Commission), reported on September 21, 2000, that, referring to the _____, injury, he believes that the claimant sustained a left knee twisting injury and a degenerative medial meniscus tear and that in his medical opinion the compensable injury of a torn medial meniscus is the producing cause of his need for a left total knee replacement. The October 6, 2000, report of Dr. S, the claimant's current treating doctor, also supports the challenged determination. We are satisfied that the challenged determination, insofar as it finds that the claimant's compensable injury of _____, includes posttraumatic degenerative arthritis of the left knee, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The disputed issue on appeal, as framed at the benefit review conference and not altered at the hearing, states as follows:

Did the compensable injury of _____ include post traumatic degenerative arthritis of the left knee **that now requires total knee replacement**, along with aggravation of the left tibial plateau fracture [emphasis added]?

The hearing officer's Finding of Fact No. 6 states that "[w]ithin reasonable medical probability, [Dr. B] determined that Claimant's compensable injury accelerated arthritic changes in the left knee and was a producing cause of Claimant's need for a total knee replacement." Conclusion of Law No. 3 states that "[t]he compensable injury of _____, includes post traumatic degenerative arthritis of the left knee that now requires total knee replacement." This language is restated in the "Decision" portion of the Decision and Order.

The carrier contended that not only does the medical evidence not establish either aspect of the extent-of-injury issue (degenerative arthritis that requires total knee replacement and aggravation of the left tibial plateau fracture) but also that the evidence does not support the need for a total knee replacement. The medical opinions were divided on whether the claimant should have a total knee replacement or another type surgical repair. On appeal, the carrier contends that not only is the evidence insufficient to support the determination that the claimant's compensable injury includes posttraumatic degenerative arthritis but also that the matter of the necessity of a total knee replacement is an issue for the Commission's Medical Review Division. We agree. Insofar as the hearing officer's determination purports to find that the injury includes the need for a total knee replacement, such finding is of no force and effect because the hearing officer lacks jurisdiction over issues of the necessity and reasonableness of proposed medical treatment. See Texas Workers' Compensation Commission Appeal No. 980213, decided March 23, 1998, which is dispositive of the issue. See *a/so* Texas Workers' Compensation Commission Appeal No. 981110, decided July 10, 1998.

The hearing officer's decision and order is affirmed except for the words "that now requires total knee replacement."

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge