

APPEAL NO. 010860

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 April 4, 2001. The issues were:

1. Is the _____ compensable injury a producing cause of the [respondent] claimant's right knee severe post-traumatic arthritis after _____?
2. Did the claimant sustain a compensable injury on _____?
3. Did the claimant have disability resulting from the injury sustained on _____?

The hearing officer determined that the _____, injury (the 1996 injury) was a producing cause of the claimant's right knee severe post-traumatic arthritis after _____; that the claimant sustained a compensable right knee injury on _____ (the 2000 injury); and that the claimant had disability from July 24, 2000, through August 11, 2000, due to the 2000 injury. The hearing officer's decisions on the issues of the 2000 injury and disability have not been appealed and have become final pursuant to Section 410.169.

Appellant (carrier 1) appeals contending: (1) that all of respondent (carrier 2) exhibits should have been excluded and carrier 2 should have been excluded from the proceeding; (2) that the evidence was insufficient to support the hearing officer's determinations on producing cause; and (3) that the hearing officer erred in ordering both carriers to pay medical benefits. Carrier 2 responded, urging affirmance. The file does not contain a response from the claimant.

DECISION

Affirmed.

This case involves a claimant who sustained two compensable injuries (the 1996 injury and the 2000 injury) while working for the employer, who changed workers' compensation insurance carriers between the two injuries. Carrier 1 had coverage for the 1996 injury and carrier 2 had coverage for the 2000 injury.

The claimant and carrier 1 stipulated that the claimant sustained a compensable right knee injury on _____. The claimant and carrier 2 stipulated that the claimant sustained a compensable right knee injury on _____, and had disability due to that injury. Carrier 1 then sought to exclude carrier 2 and carrier 2's evidence asserting that the stipulation between the claimant and carrier 2 was "tantamount to an oral benefit dispute agreement and resolved the only issues pending between [carrier 2] and [the claimant]."

These issues having been resolved by stipulation, there was no purpose or reason for [carrier 2] to continue as an active participant in the [CCH].” Carrier 1 argues the binding nature of the stipulations. We hold that the hearing officer did not err in rejecting carrier 1's motion and contentions. The wording of the first issue leaves in doubt who will be responsible for the claimant's “severe post-traumatic arthritis” and carrier 2 certainly had the right to argue that some or all of the claimant's arthritis was caused by the 1996 injury and was carrier 1's responsibility, at least in part.

Carrier 1's appeal also speculates on the hearing officer's motives or belief that the CCH was to adjudicate “reasonableness and necessity of a total knee replacement,” that the hearing officer “expressed concern as to [carrier 2's] solvency,” and that the hearing officer either “misunderstood or predetermined the first issue.” Our review of the record does not indicate that to be the case or that the hearing officer erred in applying the evidence to the issues before her.

The claimant had had right knee surgery in the 1980s and in 1991, and sustained the stipulated 1996 injury when he slipped on some soil on a berm and twisted his right knee. The claimant had arthroscopic knee surgery in 1996 “in an attempt to try to give him a few more years without having to have a total knee replacement” according to Dr. M's report of December 7, 2000. The claimant returned to work in January 1997. How much problem the claimant's knee gave him between January 1997 and July 2000 is in dispute. At least one report from Dr. H, dated November 19, 1997, notes that the claimant had “returning pain” in the right knee, and that the claimant was given an injection and had an impression of “severe post traumatic arthritis with recurrent pain and effusion.” The claimant testified as to self-medication and activity modification between January 1997 and July 2000. The claimant sustained the 2000 injury when his right knee was hit by a heavy gate. The claimant currently requires a total knee replacement.

The hearing officer commented:

The preponderance of the credible evidence supports a finding that the _____ right knee injury was a producing cause of the post-traumatic arthritis after _____. The 1996 injury need only be a cause, not the sole cause. [Emphasis in the original.]

The hearing officer then found in Finding of Fact No. 3:

3. The post-traumatic arthritis in the claimant's right knee diagnosed by [Dr. H] after _____, directly resulted and naturally flowed from the compensable right knee injury of _____.

The hearing officer then ordered “[b]oth Carriers are ordered to pay medical . . . benefits.” Carrier 1 asserts that the hearing officer erred in ordering it to share in the payment of medical benefits because that was not an issue before the hearing officer and was a matter for the medical dispute review process. We disagree. Section 410.168 requires the

hearing officer to issue a written decision to include “a determination of whether benefits are due” and “an award of benefits due.” Carrier 1 seeks to absolve itself from paying any further medical benefits. The hearing officer clearly found that the 1996 injury contributed, at least in part, to the claimant’s degenerative arthritis and “severe post-traumatic arthritis,” and that carrier 1 is to continue to have liability for medical care reasonably required by the 1996 injury. See Section 408.021.

The hearing officer’s determination on the issues is not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the hearing officer’s decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O’Neill
Appeals Judge

Robert W. Potts
Appeals Judge