

APPEAL NO. 011086
FILED JUNE 14, 2001

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 5, 2001, with the record closing on April 23, 2001. With regard to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable right knee injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant had disability from August 7 through the date of the CCH.

The appellant (carrier) appealed, citing medical evidence contrary to the hearing officer's decision and asserting that the claimant failed to prove a new and distinct injury on _____. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as an air conditioner repairman. As the hearing officer indicates, although perhaps not apparent to the claimant, he had certain degenerative changes in his right knee, including arthritis and a Baker's cyst, which predated _____. On _____, the claimant was working on top of a bus repairing the air-conditioning system. The claimant testified regarding his duties, which involved kneeling, bending, and twisting as well as climbing up and down a set of steps to get to the top of the bus. The claimant testified that as he was climbing down the steps, he noticed stiffness, pain, and swelling in his right knee. The claimant's position is that his kneeling and crawling aggravated his preexisting problems. The claimant was eventually diagnosed as having several meniscus tears and rheumatoid arthritis (which may have caused the cyst). The claimant continued working light duty until he had surgery on his right knee on August 7. The carrier argues that the evidence does not support a new distinct injury.

The medical evidence is conflicting. In a report dated December 1, the claimant's treating doctor, Dr. A, who performed the surgery, wrote:

[I]t is my opinion, based on reasonable medical probability, that [claimant] aggravated an ongoing pathology on his right knee while working on _____. There is possible systemic disease, with positive blood work for rheumatoid arthritis, with a sed rate of 25, which is elevated. This explains the marked synovitis and plicas and Baker cyst and severe synovitis of the lateral and medial joint line.

The apparent meniscal tear appears to be acute and related to the injury on _____.

Dr. P, in a response to questions propounded by the carrier, states:

In medical probability, all the conditions of the knee were not caused by the routine activity of climbing down a ladder on _____. Thus, I think there is strong objective evidence to indicate that the incident of _____ as described by [claimant] did not cause the conditions of his knee, and thus these conditions are not work related.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and this is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination regarding the issues is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge