

APPEAL NO. 011844
FILED SEPTEMBER 24, 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 was held on July 17, 2001. With regard to the only issue before her, the hearing officer determined that the respondent's (claimant) compensable (right ankle) injury of _____ (all dates are 2000 unless otherwise noted), extends to and includes a left knee injury.

The appellant (carrier) appeals, contending that there was no prompt onset of left knee complaints until three months after the date of injury and that its peer review doctor had opined that a meniscal tear could not have gone that long unnoticed and untreated. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a heavy equipment maintenance supervisor. The claimant sustained a compensable injury on _____ when he slipped on a ladder getting off a truck and fell five or six feet to the ground. The carrier has accepted a right ankle injury. The claimant testified that he saw the employer's doctor, Dr. G, the next day, _____, but no records from Dr. G are in evidence. Claimant was released to work and continued work. The claimant saw Dr. H on August 24 for his right ankle injury. At some point, the claimant was limited in what work he could do and was terminated by the employer. The claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated October 13 in which he listed the body parts injured as right ankle and left knee. In a recorded statement taken on October 26, the claimant mentioned left knee complaints. The claimant began treating with Dr. M, who, in progress notes beginning on November 15, notes complaints of "medial knee pain [L] knee." In a report dated November 15, Dr. M recited a history of the fall, and right ankle injury and noted "additionally at that time, [claimant] noticed knee pain, but did not focus on it because his right ankle was such a severe problem." The claimant had knee surgery in December.

The carrier focused on the lack of medically documented left knee complaints between _____ and November 15. The carrier also emphasizes a peer review report dated February 2, 2001, from Dr. O, who is of the opinion that the claimant could not "go 4 months without significant symptoms." We note that Dr. O uses a July 16 date of injury, some two and one-half weeks earlier than the actual _____ date of injury.

The carrier, in its appeal, mentions some "naturally flowing" follow-on injury type cases. We do not find those cases applicable here where the crux of the issue is whether the claimant injured his left knee in addition to his right ankle in the _____ fall. The carrier principally relies on the time-line of lack of medically documented complaints

and Dr. O's opinion that the claimant could not go four months with this injury. We note that the claimant's TWCC-41 dated October 13 does claim a left knee injury.

Whether the claimant sustained the left knee injury in the _____ work-related fall is a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. 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 decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN ST.
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge