

APPEAL NO. 011890
FILED SEPTEMBER 20, 2001

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 June 15, 2001, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. The claimant has appealed these determinations on evidentiary sufficiency grounds, apparently asserting that the medical records met his burden of proof. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that on _____, while working all day repairing a leaking brake cylinder on a forklift, he had to frequently kneel on the concrete slab strewn with rocks where the forklift was parked, and that once when he knelt down, his right knee hit a rock and he felt pain in his knee. He said he continued to work that day and the next and reported the injury to his supervisor, Mr. E, on October 26, 2000; that he commenced medical treatment from Dr. L on October 26, 2000, and was later referred to Dr. M; that Dr. M has not been able to perform surgery on the knee because of the carrier's dispute; and that Dr. M ultimately took him off work altogether when advised that light-duty work was not available with the employer. The claimant further testified that he told both of these doctors that he injured his knee when he knelt on a rock and that the doctors have erred if their records do not reflect that history of the mechanism of injury. Dr. L's record of October 24, 2000, states that the claimant said he had worked about six hours, mostly on his right knee, but did not recall hitting anything with the knee. The claimant said he had previously injured his right knee in 1994 and thereafter had arthroscopic surgery, but was fully recovered before sustaining the injury on _____. The November 8, 2000, MRI report on the knee reflected degenerative arthritis, joint effusion, chondromalacia, a "degenerative type of tear" in the medial meniscus, and a grade I injury of the medial collateral ligament. The January 2, 2001, peer review report of Dr. S concludes that the mechanism of injury (prolonged kneeling) would not have caused the degenerative findings but could have exacerbated the preexisting degenerative changes and could have resulted in the medial meniscus tear.

Mr. E testified that the claimant reported to him that he injured the knee on _____, at a different location, while installing a transmission. Mr. E further stated that after the claimant, a good worker, failed to obtain a promotion, he developed a poor attitude at work and had to be admonished.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel

has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). 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.). As an appellate reviewing tribunal, 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. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge