

APPEAL NO. 012118  
FILED OCTOBER 18, 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 July 27, 2001. The hearing officer resolved the disputed issue by concluding that the appellant's (claimant) compensable injury does not include, nor extend to include, an injury for severe destructive osteoarthritis to the right ankle, nor for a fracture of the osteochondral cartilage fragments within the joint at the right ankle. The claimant appeals, essentially arguing that the decision of the hearing officer is against the great weight and preponderance of the evidence. The respondent (carrier) replies, asserting that the evidence introduced at the CCH supports the decision and order of the hearing officer.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury diagnosed as a right ankle sprain. Though its exact nature was not clear, the evidence was undisputed that the claimant, as a child, had a preexisting condition in his right ankle, which was surgically treated. The records reflect that an x-ray taken only two days after the compensable injury showed marked derangement/deformity of the right ankle with striking posttraumatic and secondary osteoarthritic degenerative changes.

In correspondence to the Texas Workers' Compensation Commission dated June 28, 2000, the claimant's initial treating physician, Dr. J, recognized the claimant's preexisting condition and stated, "I do feel that [claimant] does have a slight impairment due to the fact that this injury aggravated his deformity."

Dr. P, who examined the claimant on February 27, 2001, concluded that the claimant does have severe destructive osteoarthritis of the right ankle, but that this condition was not the result of the on-the-job injury. The peer review report written by Dr. GR dated May 3, 1999, concluded that, based on the information available, it was very unlikely that the injury of \_\_\_\_\_, resulted in anything more than a mild sprain in the claimant's ankle on top of extensive preexisting damage. Additionally, Dr. GR noted that there was extensive preexisting damage in the right foot and ankle and concluded, based on the existing medical evidence, that "there was not reagravation of a preexisting condition."

The designated doctor, Dr. G, determined that the claimant sustained only an ankle sprain and that any pain that persisted was not due to the injury at hand but rather to the fact that the claimant has had extensive intervention in the past and the development of severe degenerative changes in the injured ankle/foot.

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury and the nature and extent of that injury. Johnson v.

Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That issue presented to the hearing officer was a question of fact for her to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence (Section 410.165(a)), resolves conflicts and inconsistencies in the evidence, and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proving a causal connection between his compensable injury and the severe destructive osteoarthritis and fracture of the osteochondral cartilage fragments to his right ankle. As noted above, there was conflicting evidence on that issue and it was the hearing officer's responsibility to resolve the conflicts and inconsistencies in the evidence and to decide what facts were established. The hearing officer was acting within her province as the fact finder in determining that the claimant's compensable injury did not extend to severe destructive osteoarthritis to the right ankle nor to a fracture of the osteochondral cartilage fragments within the joint at the right ankle. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to reverse that determination on appeal.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND** (effective September 1, 2001, the true corporate name is **TEXAS MUTUAL INSURANCE COMPANY**) and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge