APPEAL NO. 012200
FILED NOVEMBER 5, 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 August 30, 2001. The hearing officer consolidated and considered two different docket numbers in the same CCH. As to Docket Number (1) (the 1996 case), the hearing officer determined that the compensable injury of _____, extended to a torn meniscus after _____. A second issue relating to periods of disability resulting from the _____, compensable injury was withdrawn by the appellant (claimant), as the parties stipulated that the statutory maximum medical improvement date for that injury was _____. The claimant appeals the extent-of-injury determination set forth above, stating that the 1996 injury had a normal MRI and was treated with cortisone injections, while the _____, injury resulted in arthroscopic surgery. She believes the 1998 injury is a new compensable injury. The claimant also alleges that the "MRI evidence was improperly admitted." As to Docket Number (2) (the 1998 case), the hearing officer determined that the claimant did not sustain a compensable injury on _____; that the claimant timely reported the alleged injury to her employer; and that the claimant did not have disability as a result of the alleged _____, injury. The claimant appeals the determinations of no new compensable injury and no disability on sufficiency of the evidence grounds. Our file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

Regarding the 1996 case, there was evidence from which the hearing officer could conclude that the 1996 compensable injury extended to a torn meniscus after _____. The hearing officer had evidence that the claimant was treated conservatively for her 1996 knee injury for nearly two years; that for several months preceding the alleged _____, injury, the treating doctor documented tenderness and swelling of the right knee; and that the treating doctor arranged for the claimant to have an MRI done on July 17, 1998. There were statements from peer review doctors which point out that the right knee menisci tears indicated in the July 17, 1998, MRI, and a subsequent MRI done on January 11, 2001, are consistent with degenerative changes rather than to any specific trauma to the knee. This evidence supports a determination that the right-knee problems experienced in 1998 were a continuation of the 1996 injury and not a new injury.

Regarding the 1998 case, the hearing officer could conclude from the evidence that the claimant's tripping incident did not result in any damage or harm to the physical structure of the claimant's right knee, and that the surgery in 1998 and subsequent time off from work was related to the _____, compensable injury and not to a new injury on _____. The documentation of the claimant's medical condition for several months prior to the _____, incident sufficiently supports the hearing officer's

determination that this was the old injury "acting up" rather than a new injury. Since there is no compensable injury on _____, the claimant does not have disability. Section 401.011(16).

We do not understand the claimant's objection that the "MRI evidence was improperly admitted" as the three MRI reports in this case were admitted as Claimant's Exhibit No. 2, without objection by the self-insured. If the claimant thought there was a problem with the admission of any or all of the MRI reports, she should not have put them into evidence at the CCH. This objection is without merit.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The true corporate name of the insurance carrier is **(SELF-INSURED EMPLOYER)** and the name and address of its registered agent for service of process is

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge