

APPEAL NO. 012545
FILED DECEMBER 13, 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 September 21, 2001. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant (claimant) sustained a compensable injury to the thoracic and lumbar regions of her spine and to the left knee, in the form of a medial meniscus tear and superior meniscal surface tear on _____; that the injury to the left knee is part of the original compensable injury and is not a follow-on injury; and that the claimant had disability from April 18, 2001, through the date of the hearing. The appellant/cross-respondent (carrier) appealed, asserting that the claimant did not sustain a compensable injury to her back and left knee and that she did not have disability for the period of time found by the hearing officer. The claimant appealed seeking clarification of facially inconsistent findings concerning the left knee injury. Neither party filed a response.

DECISION

Affirmed as reformed in part, reversed and rendered in part.

The claimant testified that she was employed as a production assistant and normally performed clerical office duties. However, on Saturday, _____, she was asked to assist on the assembly line, in order to get a special project done in time, and her primary duty that day was to inspect and make sure the voltage was set properly on computer components as they came down the line. If the voltage setting was improper, she reset it using a small pencil-like object. The claimant further testified that, on that day, she also helped load and unload the computer components from boxes when people were on breaks and she was doing a lot of bending, leaning, and twisting. She stated that toward the end of the day, she felt a twinge in her back and leg while lifting a component out of a box; that she did not realize the extent of her injury at the time and finished her shift without reporting an injury; and that she awoke the next day and knew she was injured because she had lost range of motion in her back and her left knee would not bend normally. As this was a Sunday, the claimant was not scheduled to work. The claimant said that on Monday, _____, she reported the injury to her supervisors when she arrived at work. The claimant's supervisor testified that the claimant did report that her back was bothering her and that she was walking with difficulty. The claimant stated that she worked all day Monday; that on Tuesday she was sent to clinic for medical attention; that she was diagnosed with a lumbar/thoracic strain and left knee strain; and that she was given three days of physical therapy and released to regular duty on April 10, 2001, and released again on April 16, 2001. An April 16, 2001, patient note indicates that the claimant reported that her back was "all well," but her knee had gotten worse. The claimant testified that on April 17, 2001, she began treating with Dr. I, who diagnosed a medial meniscus tear, knee sprain/strain, myospasm lumbosacral sprain/strain, thoracic sprain/strain, and possible lumbar disc syndrome; he took the claimant off work as of that day. The claimant stated that she was released to light duty at some point prior to the benefit review conference,

which was held on August 24, 2001, and that she could have returned to work for the employer doing clerical work if she wanted to, but that she chose not to return to work due to her “pregnancy condition.” It appears from our review of the record that Dr. I in fact had the claimant on light-duty status as early as July 11, 2001.

The hearing officer did not err in determining that on _____, the claimant sustained a compensable injury to the thoracic and lumbar regions of her spine and to her left knee, in the form of a medial meniscus tear and superior meniscal surface tear. 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 it is to be given. 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). The claimant’s testimony and the medical records submitted support the hearing officer’s determination on the issue of the injury. The records show that the claimant complained of knee and back pain commencing on her first visit to the clinic. Additionally, there is a narrative report from Dr. I indicating that the claimant’s injuries are consistent with the activities she performed on _____.

On appeal, the claimant requests clarification of internal inconsistencies contained within the hearing officer’s decision. In her Statement of the Evidence at page three, the hearing officer states, “Therefore, based on the evidence as a whole it is this Hearing Officer’s finding that the Claimant sustained a compensable injury to the thoracic and lumbar regions of the spine and to the left knee in the form of a medical [sic] meniscus tear and superior meniscal surface tear.” Later in her Statement of the Evidence the hearing officer states, “The final issue before the Commission [Texas Workers’ Compensation Commission] is whether the compensable injury extends to and includes a left knee injury (medial meniscus tear and superior meniscal surface tear). Based on the evidence provided this Hearing Officer found the meniscal tear was part of the original compensable injury. Therefore, it is not considered a follow on injury.” The hearing officer’s Finding of Fact No. 2 is consistent with her Statement of the Evidence in that she finds, “On _____, the Claimant sustained an injury to the thoracic and lumbar regions of the spine and to the left knee in the form of a medial meniscus tear and superior meniscal surface tear while in the course and scope of her employment.” The hearing officer goes on to state in Conclusion of Law No. 4, “The compensable injury does not extend to and include a left knee injury (medial meniscus tear and superior meniscal surface tear).” It is clear from the decision that the hearing officer did find that the claimant sustained a compensable injury to her left knee on _____. Therefore, we reform Conclusion of Law No. 4 by deleting the word “not” so that it now reads, “The compensable injury does extend to and include a left knee injury (medial meniscus tear and superior meniscal surface tear).”

The hearing officer's determination that the claimant had disability from April 18, 2001, through the date of the hearing is reversed, and a new decision is rendered that the claimant had disability from April 18, 2001, through July 11, 2001, which is the date the claimant was released to light duty by Dr. I.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. While we have noted that a light-duty release does not in and of itself end disability, we stated in Texas Workers' Compensation Commission Appeal No. 950527, decided May 22, 1995 (Unpublished), and Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991:

Where the medical release is conditional and not a return to full duty status because of the compensable injury, disability, by definition, has not ended unless the employee is able to obtain and retain employment at wages equivalent to his preinjury wages. Evidence to establish this must show there is employment at preinjury wage levels reasonably available to the employee meeting the conditions of the medical release, taking into consideration reasonable limitations on the type of work suitable within the framework of the employee's abilities, training, experience and qualifications, and that the employee has not availed himself of such employment opportunities.

An employer's representative testified that there was work available to the claimant that would meet her restrictions. The claimant clearly testified that she could have returned to her clerical duties after she was released to light duty but chose not to due to her pregnancy. We believe that taken together, this testimony constitutes the great weight and preponderance of the evidence and shows that after the claimant was released to light-duty work, she was unable to obtain and retain employment at wages equivalent to her preinjury wages for reasons other than her compensable injury. Consequently, we reverse the hearing officer's decision as to the period of disability and render a new decision that the claimant had disability from April 18, 2001, until July 11, 2001, which is the date the claimant was released to light duty by Dr. I. The remainder of the hearing officer's decision, as reformed, is affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge