APPEAL NO. 013104
FILED FEBRUARY 5, 2002

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 December 3, 2001. The hearing officer determined that the compensable injury does not extend to and include an injury to the left hip, nor to depression. The appellant (claimant) appealed, arguing that the hearing officer erred in determining extent of injury. Also, the claimant argues that the hearing officer erred in admitting Carrier's Exhibit No. 2 into evidence. The respondent (self-insured) filed a response urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that he was injured when he was kicked in the back of his knee, and upon falling onto the concrete floor, he injured his left knee and left hip. The claimant had surgery to his left knee in April 2001. The medical reports in evidence indicate that the claimant first complained of left hip pain in June 2001. He had another slip and fall a month later. The claimant asserted that his depression was a result of the left knee injury sustained on _____.

The hearing officer did not err in determining that the claimant's compensable injury does not extend to and include an injury to the left hip, nor to depression. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The hearing officer opined that the claimant's testimony was not credible and that the medical reports in evidence do not support a left hip injury or depression as a result of the compensable injury. The evidence sufficiently supports the hearing officer's determination that the compensable injury does not extend to or include an injury to the left hip or depression.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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 hearing officer did not abuse his discretion in admitting Carrier's Exhibit No. 2 into evidence over the claimant's objection. The claimant contends on appeal that the hearing officer would have not questioned the claimant's credibility or relied on medical reports to reach an unfavorable determination if Carrier's Exhibit No. 2 had been excluded. We do not agree. Upon review of the record, the claimant objected to Carrier's Exhibit No. 2, a subpoena duces tecum of medical reports, as "not timely exchanged and not relevant." The self-insured received and exchanged the medical reports on November 30, 2001. The hearing officer determined that the self-insured exchanged the documents as soon as they were received by the self-insured. The hearing officer offered the claimant a continuance, and the claimant did not accept the continuance. The claimant wanted to proceed with the CCH to determine extent of injury so that an impairment rating could be assigned by a designated doctor. The claimant has not shown that the hearing officer committed reversible error in admitting Carrier's Exhibit No. 2 based on him admitting medical reports into evidence in accordance with Section 410.161 of the 1989 Act. The claimant has not shown that the hearing officer's ruling was in error or that error, if any, was reasonably calculated to cause and probably did cause an improper decision. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.- San Antonio 1981, no writ).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

CITY SECRETARY
ADDRESS
CITY, STATE, ZIP

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge