

APPEAL NO. 020106  
FILED MARCH 7, 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 November 28, 2001. The hearing officer resolved the disputed issues before her by determining that the respondent (claimant herein) sustained a compensable injury on \_\_\_\_\_, and that he had disability from July 15, 2001, continuing through the date of the CCH. The appellant (carrier herein) filed a request for review, contending that these determinations were contrary to the evidence. The carrier also argues that the hearing officer's rationale was not consistent with the evidence or the claimant's theory of the case. Finally, the carrier complains that the hearing officer erred both in admitting evidence which was not timely exchanged and in not specifically identifying the nature of the injury. The claimant responded, arguing that there was sufficient evidence to support the decision of the hearing officer and urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant testified that he injured his left knee on \_\_\_\_\_, when he was kneeled on the ground to stock a bottom shelf while working as a route sales representative. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). There was conflicting evidence presented on the issues of injury and disability. The carrier argued that the claimant had variously described his left knee injury as taking place during physical therapy for his prior right knee injury and as a result of repetitive work trauma rather than a specific incident. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant, and she was acting within her role as fact finder in determining that the claimant sustained his burden of proof on both the issue of injury and disability. Nothing in our review of the evidence indicates that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The carrier also argues that the hearing officer's rationale was not consistent with the claimant's theory of the case in that in her discussion the hearing officer states that the claimant suffered some kind of internal derangement of his knee during physical therapy, but that the kneeling at work on \_\_\_\_\_, "completed the injury." It is well-settled that merely having a preexisting physical problem does not preclude a subsequent compensable injury. Also, it is equally well-settled that the aggravation of a preexisting condition can in and of itself constitute a compensable injury.

Nor do we find merit in the carrier's argument that the hearing officer erred in admitting evidence not timely exchanged. The claimant argued that he provided the documents in question to the carrier as soon as they became available to the claimant. Further, the carrier has not shown harm in the admission of these documents. See, *generally, Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

Finally, the carrier argues that the hearing officer erred in not specifically describing the nature of the claimant's injury. The hearing officer describes the injury as one to the left knee. The carrier apparently believes that the hearing officer should have provided a diagnosis to facilitate its adjustment of the claimant's medical claim. We note that the issue of extent of injury was not before the hearing officer. Therefore, we find no merit in this point of error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 N. ST. PAUL  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Chris Cowan  
Appeals Judge