

APPEAL NO. 020271
FILED MARCH 21, 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 was (CCH) held on January 15, 2002. The hearing officer resolved the sole issue before her by determining that the respondent's (claimant) _____, compensable injury extended to and included an aggravation of his degenerative osteoarthritis of his left knee. The appellant (carrier) appealed on sufficiency grounds; further, the carrier argued that the hearing officer abused her discretion in not keeping the record open for the time requisite for the carrier to procure an additional doctor's records and/or not granting the carrier's request for continuance to accomplish same. The claimant's response urges affirmance on all points.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's _____, compensable injury extended to and included an aggravation of his degenerative osteoarthritis of his left knee. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer decided that the claimant was credible and that his testimony regarding the nature of his compensable injury and the resultant change of the condition in his left knee (an aggravation of his preexisting osteoarthritis) was supported by the medical evidence he presented. Upon review of the record, we conclude that the hearing officer's determination is supported by the evidence, and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

The hearing officer did not abuse her discretion in denying the carrier's request to hold the record open and/or for a continuance, so that the carrier could procure records from another doctor about whom it claims to have not received notice. To obtain a reversal based upon an abuse of discretion, some showing must be made that the determinations made were arbitrary or without any basis in the record, that is, whether the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., 714 S.W.2d 297 (Tex. 1986). We find that the hearing officer acted appropriately within that standard, in that she specifically explained her reasoning in her decision and order as follows

. . . The carrier had the opportunity through discovery to question the claimant regarding prior treatment and medical facilities, but chose to forego that option. The carrier's claim that they [sic] were prejudiced by some occurrence at a mediation process did not establish good cause for continuance or allowing further discovery as the carrier has an independent

power and *duty* to investigate a claim and *did not use all discovery options available prior to the [CCH]*. (emphasis added).

The hearing officer acted within her discretion in ruling against the carrier on these issues.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**TIM KELLY
AIG
675 BERING, 3RD FLOOR
HOUSTON, TEXAS 77057.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge