

APPEAL NO. 020312
FILED MARCH 14, 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 January 15, 2002. The hearing officer determined that on _____, the appellant (claimant) sustained a compensable left knee injury but not a compensable low back injury and that the claimant had disability beginning August 13, 2001, and continuing only through October 9, 2001. The claimant appeals the hearing officer's determinations contending that the hearing officer erred in determining the "extent of injury"; that the respondent (carrier) waived the right to dispute the compensability issue; and that the determinations were against the great weight and preponderance of the evidence. The carrier replies that the Appeals Panel should affirm the decision of the hearing officer.

DECISION

Affirmed.

Neither party appeals the determination that the claimant suffered a compensable knee injury on _____, and had disability therefrom during the period between _____, through October 9, 2001. The claimant argues that the hearing officer erroneously found that the claimant's compensable injury was limited to an injury of his left knee. We note that the issues reported out of the benefit review conference were injury and disability. We have encouraged hearing officers to indicate the nature of the injury when determining whether an injury existed. See Texas Workers' Compensation Commission Appeal No. 010322, decided March 22, 2001. The hearing officer determined that the claimant sustained a compensable injury, specifically describing what body parts were injured as a result of the injury based on the evidence presented to him. The parties actually litigated whether in addition to an injury to his knee, he sustained an injury to his low back. The hearing officer properly decided the mechanism of injury to the claimant's knee did not cause an injury to the claimant's back.

The claimant also contends that the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) was insufficient to dispute whether the claimant sustained an injury. An issue first raised on appeal is generally not considered by the Appeals Panel. Texas Workers' Compensation Commission Appeal No. 961991, decided November 21, 1996; Texas Workers' Compensation Commission Appeal No. 91057, decided December 2, 1991. The sufficiency of the TWCC-21 was not an issue, nor was it litigated; consequently, we refuse to consider the sufficiency of the TWCC-21 for the first time on appeal.

There was conflicting evidence presented at the CCH on the disputed issues. 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). 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 hearing officer's determinations on the issues are 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge