APPEAL NO. 021561
FILED JULY 31, 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 held on May 20, 2002. With respect to the single issue before him, the hearing officer determined that the "left medial meniscus tear reported in the operative report of June 29, 2001 is not a result of the compensable injury of _____." In his appeal, the appellant (claimant) argues that the hearing officer's determination is against the great weight of the evidence. In addition, the claimant argues that the hearing officer abused his discretion "by failing to consider the testimony of the Claimant and by failing to hear portions of the closing arguments put forth by Claimant's attorney." Specifically, the claimant contends that "[o]n three separate occasions the Hearing Officer was observed falling asleep during the testimony and presentation of evidence." In its response, the respondent (carrier) urges affirmance and specifically denies that the hearing officer slept at the hearing.

DECISION

Affirmed.

The hearing officer did not err in determining that the recurrent medial meniscus tear discovered in the June 29, 2001, surgery is not a result of the compensable injury of _____. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In view of the evidence presented, we cannot conclude that the hearing officer's determination that the compensable injury does not include the recurrent tear of the medial meniscus is 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 reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We find no merit in the claimant's assertion that the hearing officer slept during the hearing. Initially, we note that the claimant did not raise an objection at the hearing about the hearing officer's having been asleep. However, we further note that our review of the record reveals that the hearing officer fully participated in the hearing. Indeed, he sought clarification of the claimant's answers during direct examination, cross-examination, and redirect examination, and he anticipated that the tape was about to run out and changed sides prior to the time the recording would have stopped.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Susan M. Kelley
Appeals Judge