

APPEAL NO. 021828
FILED SEPTEMBER 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on June 14, 2002, the hearing officer determined that the appellant's (claimant) compensable left knee injury of _____, does not extend to and include chondromalacia of the patella, lateral patellar subluxation and/or prepatellar bursitis; and that the claimant did not have disability beginning on March 15, 2002, and continuing through the date of the hearing. The claimant has requested our review of these determinations, contending that the great weight of the evidence establishes that the claimant's left knee injury did extend beyond a mere contusion or sprain/strain injury, and that she should have disability following her left knee surgery on March 15, 2002, which the respondent (self-insured) had preauthorized. The self-insured urges in its response that the evidence is sufficient to support the challenged factual findings and legal conclusions, and that the hearing officer's findings concerning evidence of another left knee injury on _____, did not violate Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §142.7 (Rule 142.7).

DECISION

Affirmed.

The claimant testified that on _____, while working in a school cafeteria kitchen, she slipped on a wet spot and fell, injuring her left knee; that she was subsequently treated by a series of medical doctors and eventually changed her treating doctor to Dr. L, who provided her with chiropractic treatments for approximately nine months before she underwent arthroscopic surgery on March 15, 2002; and that Dr. L has not released her to return to work since the surgery. The claimant's testimony and medical records reflect that she underwent MRI exams of her left knee in October 2000 and June 2001; that she was twice examined by a doctor selected by the self-insured; and that she was examined by a designated doctor. The medical records also reflect that the claimant had another slip and fall at work on _____. The claimant, responding through her representative to questions propounded by the hearing officer after the close of the evidence, indicated that another claim file had been established by the Texas Workers' Compensation Commission following her _____, slip and fall but that she and the self-insured entered into a benefit review conference agreement to the effect that the _____, event was an "incident," not an "injury." Several medical reports state the left knee diagnosis after the _____, slip and fall as a contusion. The medical reports of the required medical examination doctor reflect that the claimant weighed 318 pounds and that the doctor felt her obesity was the cause of her continuing left knee complaints.

The claimant contends on appeal that the hearing officer erred in referring in certain of his findings to the _____, slip-and-fall incident because there was

no disputed issue concerning an injury of that date before the hearing officer. The claimant also contends that because the self-insured authorized the arthroscopic surgery, it cannot afterwards dispute the compensability of the conditions diagnosed by the surgeon and, consequently, disqualify the claimant from receiving temporary income benefits while recovering from the surgery.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, 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.). As an appellate reviewing tribunal, 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 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

**HS
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Roy L. Warren
Appeals Judge