APPEAL NO. 022167
FILED SEPTEMBER 23, 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 July 24, 2002. The hearing officer determined that (1) the appellant's (claimant) compensable injury of _____, does not include a right knee or low back injury; and (2) the claimant is relieved from the effects of the agreement signed by the parties on March 26, 2001. The claimant appeals the extent-of-injury determination on sufficiency grounds. The respondent (carrier) urges affirmance, and also argues that the claimant's request for review is untimely. The hearing officer's decision setting aside the settlement agreement was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

As to the carrier's assertion that the claimant's appeal is untimely, we refer the carrier to Section 410.202(d), amended effective June 17, 2001, to provide that Saturdays, Sundays, and holidays listed in Section 662.003, Texas Government Code, are not included in the computation of time in which a request for an appeal must be filed. The assertion of untimeliness is without merit.

The hearing officer did not err in determining that the compensable injury of _____, does not include a right knee or low back injury. The claimant had the burden to prove that the claimed injuries naturally resulted from the compensable injury to his left knee. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, 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)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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).

The claimant asserts that the hearing officer erred by not considering an alternative theory of compensability—i.e. whether the claimed injuries were sustained simultaneous to the compensable left knee injury. We note that this theory was not litigated at the hearing below. Indeed, even now, the claimant alleges facts which would tend to indicate that the claimed injuries were sustained as the result of a subsequent work-related accident, a matter which was not before the hearing officer in this case. Under the circumstances, we find no reversible error.

The decision and order of the hearing officer are affirmed.

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

FRANK A. MONTEMARANO
5205 NORTH O'CONNOR BLVD.
IRVING, TEXAS 75039.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Veronica Lopez
Appeals Judge

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Michael B. McShane
Appeals Judge