APPEAL NO. 022977
FILED JANUARY 13, 2003

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 October 22, 2002. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____[1], in the course and scope of his employment; that the compensable injury extends to and includes tears of the medial meniscus and posterior horn "in either or both knees"; and that the claimant had disability on March 4 and 5, and then again from March 19 through October 10. The appellant (self-insured) appealed the determinations on sufficiency of the evidence grounds, and contends that the hearing officer disregarded some testimony presented by the self-insured, and that the hearing officer incorrectly determined the claimant's dates of disability, if any, because the claimant was receiving pay during some of that time. The claimant responded, urging that the hearing officer be affirmed, as the determinations are supported by sufficient evidence, and the disability determination is proper. The claimant notes in his response that the self-insured has confused the standards for determining disability with those for determining the claimant's entitlement to temporary income benefits.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury in the course and scope of his employment on February 28. The claimant testified that he fell in a hole that day while performing his job duties, injuring his right ankle and both knees. The claimant's (direct) supervisor testified that she witnessed at least the last part of the claimant's fall and returned him to the office in order to fill out an accident report. While the claimant's medical records do indicate, and the claimant so testified, that he had a preexisting, degenerative knee condition (requiring bilateral surgery in 1989), they also support that the claimant aggravated or reinjured both knees, again requiring surgery. The self-insured offered the evidence of a peer review doctor who testified that all of the claimant's knee problems, including those after the date of injury, were degenerative.

The hearing officer did not err in determining that the claimant's compensable injury of _____, extends to and includes tears of the medial meniscus and posterior horn "in either or both knees." The claimant's surgical reports for the 2002 surgeries he had on both knees indicate that he had sustained the above-referenced injuries, and supported his contention that it was an extension of the compensable injury. The claimant had been symptom free for years following his 1989 bilateral knee surgeries, and only after the date of injury did he become symptomatic and require further surgery. The self-insured again argues that the injury does not so extend and

[1] All dates referenced are in the year 2002, unless otherwise noted.

again, that the medial meniscal tears are due to degenerative changes in the claimant's knees.

As we affirm the compensability and extent-of-injury determinations, we likewise affirm the hearing officer's determination that the claimant had disability on March 4 and 5 and then again from March 19 through October 10. The claimant testified that he was either unable to work or not yet released to work for these periods. The claimant had two surgeries [to both knees] in June. The self-insured's argument that the claimant was receiving pay because of his accrued sick and vacation leave, and thus did not have disability, is incorrect. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE, § 129.2(d)(2) (Rule 129.2(d)(2)). The hearing officer did not err in concluding that the claimant was unable to obtain and retain employment at his preinjury wage because of his compensable injury for the dates above-referenced. *See* Section 401.011(16).

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 of 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, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not find so here.

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

RC
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Terri Kay Oliver
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge