

APPEAL NO. 030065
FILED FEBRUARY 11, 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 December 12, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained a compensable injury on _____; that the compensable injury extends to the conditions repaired by Dr. RH, in the surgery of August 13, 2002, but does not extend to include an injury to the right knee in the form of a tear of the anterior cruciate ligament (ACL); and that the claimant had disability beginning July 26 and ending November 22, 2002. The claimant appealed, seeking reversal of the hearing officer's determination that the compensable injury did not extend to include an injury in the form of a right knee ACL tear. The respondent (carrier) responded, citing conflicting evidence on the appealed issue, and urging affirmance. The hearing officer's determinations regarding the compensable injury and disability were not appealed and have become final. Section 410.169.

DECISION

Affirmed.

It was undisputed that the claimant, a forklift driver, sustained a compensable injury in the form of a right knee contusion on _____. The evidence reflected that the claimant had surgery on his right knee on August 13, 2002. The hearing officer found that the claimant's compensable injury extended to the conditions repaired in the surgery of August 13, 2002, but determined that the injury did not extend to include a right knee ACL tear. The claimant argues that the hearing officer relied on the same medical evidence to reach the determinations regarding extent and that it was an abuse of discretion for the hearing officer to come to different conclusions regarding the conditions in dispute using the same evidence.

The operative report, dated August 13, 2002, noted that "the cruciate ligament appeared only partially remained, but there were no acute tears in it." The claimant had the burden to prove that his compensable injury extended to and included the right knee ACL tear. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer could believe part, all, or none of the testimony or medical evidence. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's extent-of-injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for

us to disturb that determination on appeal. 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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge