

APPEAL NO. 030250  
FILED MARCH 6, 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 (CCH) was held on January 7, 2003. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable right knee injury of \_\_\_\_\_, does not extend to include a left knee injury and that the respondent (carrier) did not waive the right to contest the compensability of the claimed left knee injury because the claimed left knee injury is an "extent of injury" issue. The claimant appealed, arguing that the hearing officer's determinations were against the great weight of the evidence and incorrect as a matter of law. The claimant argues that the hearing officer erred in denying the claimant's request to reform the issue from an extent-of-injury issue to one of compensability and therefore erred in stating that waiver does not apply. The carrier responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, while checking a construction site for the employer, he slipped in the mud and fell forward landing on his hands and knees. It was undisputed that the claimant sustained a compensable injury to his right knee on \_\_\_\_\_. The evidence reflected that the claimant had surgery on his right knee on August 25, 2000. At issue was whether the compensable injury extends to include an injury to the left knee. There was conflicting evidence on whether the claimant initially only claimed a right knee injury (accepted by the carrier) or a bilateral knee injury. The hearing officer noted that the account of the incident given by the claimant at the CCH was substantially different from previous accounts endorsed by the claimant.

Section 410.165(a) provides that the contested case 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). We are satisfied that the evidence sufficiently supports the hearing officer's determination that the claimant's compensable injury does not extend to or include a left knee injury.

The claimant argues that the hearing officer erred in denying his request to reform the issue from an extent-of-injury issue to one of compensability. The Employer's First Report of Injury or Illness (TWCC-1) lists the right knee as the only body part injured in the incident. Additionally, in the worker's accident report dated May 12, 2000, and signed by the claimant, the incident is described as "slipped in mud,

twisted knee” and only the right knee is circled in the diagram next to the description of the incident. The hearing officer did not err in determining that initially the claimant only claimed a right knee injury and that the carrier did not waive the right to contest the compensability of the left knee injury by not timely contesting the injury in accordance with Section 409.021. Whether the compensable injury included the left knee was an extent-of-injury question. See Texas Workers’ Compensation Commission Appeal No. 002228, decided November 8, 2000. Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) “do not apply to disputes of extent of injury.” Accordingly, the hearing officer properly concluded that the carrier did not waive the right to contest the compensability of the left knee.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for Paula Insurance Company, an impaired carrier and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR  
T.P.C.I.G.A.  
9120 BURNET ROAD  
AUSTIN, TEXAS 78758.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Terri Kay Oliver  
Appeals Judge