

APPEAL NO. 031320  
FILED JULY 8, 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 April 15, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability from December 28, 2002, through March 26, 2003. The appellant (carrier) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence and that the hearing officer impermissibly shifted the burden to the carrier when she noted in her statement of the evidence that the evidence presented was insufficient to show that a preexisting condition was the sole cause of the claimant's current right knee condition. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An incident may indeed cause injury where there is preexisting infirmity where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). A claimant may meet his burden to establish an injury through his own testimony, if the hearing officer finds the testimony credible. See Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this case, the evidence conflicted regarding whether claimant sustained an injury on \_\_\_\_\_. The claimant testified that he had undergone a prior right knee surgery in 1993 or 1994 but that he had never lost time from work for his right knee prior to the incident of \_\_\_\_\_. The claimant acknowledged that his knee would pop maybe once a year after his surgery in the early 90s but testified that his knee had not required medical treatment for approximately nine years prior to the \_\_\_\_\_, incident. The claimant testified that on \_\_\_\_\_, he sat cross-legged while removing large bolts in preparation for repair work and after standing

his right knee popped and he was unable to straighten it. The evidence reflected that he went to the emergency room the date of the incident and was diagnosed with internal derangement of the knee.

The hearing officer resolved the conflicts in the evidence. We will not substitute our judgment for the hearing officer's because her determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

As we have stated many times, an aggravation of a preexisting condition is an injury in its own right. INA of Texas v. Howeth, 755 S.W.2d 534, 537 (Tex. App.-Houston [1st Dist.] 1998, no writ). A carrier that wishes to assert that a preexisting condition is the sole cause of an incapacity has the burden of proving this. Texas Employers Insurance Association v. Page, 553 S.W. 2d 98, 100 (Tex. 1977); Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1992. The carrier's argument that expert medical evidence is required to prove aggravation is overbroad; the evidence in this case is sufficient to support findings of the claimed injuries, including any aggravation of preexisting conditions.

The applicable standard of review and the law regarding disability is set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995. The testimony from the claimant supports the hearing officer's disability determination. We will not substitute our judgment for the hearing officer's because her disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Chris Cowan  
Appeals Judge