

APPEAL NO. 031410
FILED JULY 16, 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 30, 2003. With respect to the single issue before her, the hearing officer determined that the compensable injury of _____, includes an injury to the respondent's (claimant) left knee. In its appeal, the appellant (carrier) argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In the alternative, the carrier asserts that the hearing officer erred in "failing to decide the nature and extent of the claimant's alleged knee injury." The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, includes an injury to the left knee. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained her burden of proving that she injured her left knee in the slip at work. The factors emphasized by the carrier in challenging the hearing officer's extent-of-injury determination on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before her. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We also find no merit in the carrier's assertion that the hearing officer erred in not delineating the nature and extent of the claimant's left knee injury. The carrier argues that "without such specificity, the parties must essentially relitigate the extent of injury question again before the dispute can ultimately be resolved." It indeed will be unfortunate if the hearing officer's decision does not resolve the dispute between the parties. Nevertheless, we cannot agree that the hearing officer erred in this instance by failing to specifically identify what conditions in the left knee were compensable because that question simply was not before her. If, as the carrier now claims, it believed that the hearing officer needed to specifically identify the nature and extent of the compensable injury in order to resolve the true conflict between the parties, then it had an obligation to pursue such an issue in the dispute resolution process. It did not do so

and we cannot remand to have the hearing officer address an issue that was not before her.

The hearing officer's decision and order are affirmed.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge