

APPEAL NO. 031553  
FILED AUGUST 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 May 15, 2003. The hearing officer determined that the appellant/cross-respondent's (claimant) compensable low back and left wrist injury of \_\_\_\_\_, does not extend to and include a left knee injury, and that the claimant had disability from September 25 through October 1, 2002, and from October 9, 2002, through the date of the CCH.

The claimant appeals, contending that a difference in the preinjury diagnosis and post injury diagnosis "clearly show" that the claimant suffered additional harm to her left knee. The respondent/cross-appellant (self-insured) appeals the disability determination, contending that the claimant's inability to obtain and retain employment at the preinjury wage (disability) was due to the noncompensable left knee condition rather than the compensable injury. Each of the parties responded to the other party's appeal.

DECISION

Affirmed.

The claimant, a phlebotomist/lab assistant, sustained a compensable injury when she slipped and fell on \_\_\_\_\_. It is undisputed that the claimant had a long history of left knee problems going back to 1994, including left knee surgery in February 1996. The parties stipulated that the claimant had (additional) knee surgery scheduled on \_\_\_\_\_ (six days prior to her fall), and that the scheduled knee surgery was performed on October 9, 2002. The parties also stipulated that the self-insured had accepted liability for a low back and left wrist injury due to the compensable \_\_\_\_\_, fall. At issue is whether the claimant's fall, described as falling on her hands and knees, caused additional damage or harm to the physical structure of the body (definition of injury, Section 401.011(26)). There were differing diagnoses of the claimant's injury and a Texas Workers' Compensation Commission-required medical examination doctor said that, "it is possible that she may have reinjured the knee, causing worsening condition of the knee." The self-insured contends that the claimant's "pre-operative [left knee] reports lists chronic conditions and the post-operative diagnosis is the same with no acute findings noted." With conflicting evidence, it is the hearing officer, as the sole judge of the weight and credibility to be given to the evidence who resolves the conflicts and determines what facts have been established. The hearing officer did so and his determinations are supported by sufficient evidence.

On the issue of disability, the self-insured asserts that the reason for the claimant's inability to obtain and retain employment at the preinjury wage was "clearly due to the knee surgery." However, in evidence is a report and Work Status Report

(TWCC-73) taking the claimant off work on September 26, 2002, for the back and neck pain without reference to the left knee. Further, during the time the claimant was recuperating from the left knee surgery, she continued to receive treatment for her left shoulder, which eventually led to left shoulder surgery on April 9, 2003. The hearing officer commented that the "Claimant did not believe she could have worked the period from October 9, 2002, through January 28, 2003, even without knee surgery due to the other problems she was having from her [compensable] injury." Issues of disability can be established by the testimony of the claimant alone, if believed by the hearing officer. Texas Workers' Compensation Commission Appeal No. 030289, decided March 6, 2003. In this case, the claimant's testimony was believed by the hearing officer and finds some support in the medical evidence.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We hold that the hearing officer's determinations are 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).

We affirm the hearing officer's decision and order.

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

**ST  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica Lopez-Ruberto  
Appeals Judge

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Edward Vilano  
Appeals Judge