

APPEAL NO. 031743
FILED AUGUST 18, 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 June 9, 2003. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not include an injury to his right knee. The claimant appealed, asserting evidentiary error and that the decision is not supported by the evidence. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

We first address the claimant's evidentiary objection. The claimant asserts that the hearing officer erred in failing to admit a document he offered into evidence. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was error and that error was reasonably calculated to cause and probably did cause rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been stated that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We conclude that the claimant has not shown that the error, if any, in the exclusion of the complained-of evidence amounted to reversible error.

The question of extent of injury is one of fact. Section 410.165(a) provides that the 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). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer specifically stated that the claimant failed to prove by a preponderance of the credible evidence that the right knee injury of _____, naturally resulted from or flowed from the injury of _____, or that it was sustained while receiving medical treatment for _____, injury. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge