

APPEAL NO. 032050
FILED SEPTEMBER 22, 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 25, 2003. With regard to the two issues before him the hearing officer determined that the appellant's (claimant) compensable (right knee) injury of _____, does extend to and include the right knee subsequent to a motor vehicle accident (MVA) on (subsequent date of injury No. 1), and that the compensable (right knee) injury of _____, does not extend to and include a right ankle injury subsequent to a slip and fall on (subsequent date of injury No. 2). The hearing officer's determination that the compensable injury of _____, and related surgery of March 7, 2002, was a cause of the claimant's present right knee injury after the (subsequent date of injury No. 1), MVA has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the determination that the compensable right knee injury does not extend to the right ankle on a sufficiency of the evidence basis citing evidence which supports his contention. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The circumstances of the claimant's _____, right knee injury, treatment, subsequent diagnoses, arthroscopic surgery on March 7, 2002, and whether an MVA of (subsequent date of injury No. 1), was the sole cause of the claimant's present complaints have not been appealed. The claimant was still receiving therapy for his compensable right knee injury in the months after the March 7, 2002, right knee surgery. Whether the claimant had experienced episodes of his right knee giving away is disputed. The claimant testified that on (subsequent date of injury No. 2), as he was crossing a street, his right knee gave away, he fell and fractured his right ankle in the fall. The claimant cites medical evidence where the claimant's treating doctor opined that quadriceps weakness "can cause the patients knee to give when he is in knee flexion during the gait cycle," and that the claimant's "ankle fracture is secondary to his knee pathology." There was other conflicting evidence that the ankle fracture was not related to the compensable knee injury.

The claimant had the burden to prove that the compensable right knee injury caused the fall and ankle fracture on (subsequent date of injury No. 2). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether the claimant's compensable injury included the ankle fracture was a factual question 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). This is equally true of medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286

(Tex. App.-Houston [14th Dist.] 1984, no writ). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Nothing in our review of the record indicates that the hearing officer's decision is 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).

The decision and order of the hearing officer are affirmed.

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

**U.S. CORPORATION
400 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge