APPEAL NO. 032332
FILED OCTOBER 28, 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 August 18, 2003. The hearing officer determined that the respondent's (claimant) _____, compensable injury extends to include the left knee medial meniscus tear after November 8, 2002. The appellant (carrier) appeals this determination. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The carrier contends on appeal that the hearing officer "misapplied the law and falied to follow" precedent as set out in Texas Workers' Compensation Commission Appeal No. 971685, decided October 10, 1997. We disagree. The facts in Appeal No. 971685 are appreciably different from the present case in that the specific knee injury, which became the focus of Appeal No. 971685, was not, as in the present case, identified as part of the compensable injury, nor did it remain in existence prior to the subsequent incident. In the present case, the claimant sustained a left knee meniscus tear in the compensable injury, which, according to the claimant, never healed and an MRI performed after the compensable injury, but prior to the subsequent incident at the claimant's home, detected findings "which may be secondary to a prior partial meniscectomy although a meniscal tear can have similar appearance on [MRI]." For this reason, we do not believe Appeal No. 971685, *supra*, is dispositive of the issue in the present case or that the hearing officer erred in applying a "sole cause" burden of proof. *See* American Surety Co. of N.Y. v. Rushing, 356 S.W.2d 817 (Tex. Civ. App.-Texarkana 1962, writ ref'd n.r.e.); and Texas Workers' Compensation Commission Appeal No. 92463, decided October 14, 1992. In fact, because an injury is compensable even though aggravated by a subsequent occurring injury or condition, the hearing officer properly applied a "sole cause" analysis in resolving the issue before him. *See* Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994, and cases cited therein.

Extent of injury is a question of fact for the hearing officer to resolve. 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 to 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). 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). 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 and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The evidence in this case sufficiently supports the hearing officer's conclusion that while there was a new incident, it was not the "sole cause" of the claimant's knee condition after November 8, 2002, and the compensable knee injury was a contributory cause of the knee condition after November 8, 2002. We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is:

CSC- THE U. S. CORPORATION COMPANY
400 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge