

APPEAL NO. 032420
FILED NOVEMBER 5, 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 August 11, 2003. The hearing officer determined that: (1) the compensable injury of _____, extends to and includes the current condition of recurrent lumbar strain and left knee synovitis and chondromalacia; and (2) the original compensable injury included an anterior cruciate ligament (ACL) tear of the left knee. The appellant (carrier) appeals on sufficiency of the evidence grounds, and asserts that the issue of whether the compensable injury included left knee synovitis and chondromalacia was not before the hearing officer. No response was filed.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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 carrier asserts that the hearing officer erred in determining that the compensable injury extends to and includes left knee synovitis and chondromalacia, because that issue was not before the hearing officer and was not actually litigated. We note that the following issue was certified in the benefit review conference (BRC) report: Does the compensable injury of _____, extend to and include the current condition of recurrent lumbar strain and left knee [ACL] tear? In the Statement of the Evidence, however, the hearing officer explains:

The summary of the parties' positions set out in [the BRC] report, and consequently the wording of the issue certified to the [CCH], do not accurately reflect the evidence presented in this case, and especially not the medical reports. The Claimant is not contending that he currently has a tear in his [AC]. He is contending that the current condition of his knee, including ongoing pain, swelling, and crepitation, is the result of and relates back to the ACL tear he sustained as part of the compensable injury.

Upon review of the record, we cannot conclude that the hearing officer erred in considering whether the compensable injury included left knee synovitis and chondromalacia.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Petrosurance Insurance Casualty, an impaired carrier** and the name and address of its registered agent for service of process is

**ROBERT CARLIN LEE
2301 EAST LAMAR BLVD, SUITE 362
ARLINGTON, TEXAS 76006.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge