

APPEAL NO. 032646
FILED NOVEMBER 20, 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 September 8, 2003. The hearing officer decided that the appellant's (claimant herein) compensable injury does not extend to include an injury to the right knee. The claimant appeals, contending that the hearing officer's decision was contrary to the evidence and that the great weight and preponderance of the evidence showed that he had suffered an injury to the right knee due to an altered gait which resulted from the compensable injury to his left knee. The respondent (carrier herein) replies that the evidence supports the decision of the hearing officer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The question of the extent of an injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. 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). 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). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We note the claimant's reliance on appeal upon the theory that an altered gait due to the claimant's left knee injury caused an injury to his right knee. In our decision in Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, we affirmed a finding by a hearing officer that an injury due to an altered gait resulting from a compensable injury was itself compensable. We have also stated many times

that the issue of whether a subsequent injury (sometimes referred to as "follow-on" injury) was caused by a compensable injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993. Here the hearing officer decided as a matter of fact that the claimant's right knee injury did not result from his compensable left knee injury and this determination was not contrary to the great weight and preponderance of the evidence. Applying the standard of review set out above, we perceive no error. This is so even though another fact finder, might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge