

APPEAL NO. 032651
FILED NOVEMBER 12, 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 27, 2003. The hearing officer determined that respondent (claimant) sustained a compensable injury on _____, and that she had disability from April 17, 2003, to the date of the hearing. Appellant (carrier) appealed these determinations on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the decision.

DECISION

We affirm.

Carrier contends that the claimant was not furthering the employer's business at the time she fell while walking towards the exit on the way to take a smoking break. We conclude that the hearing officer did not err in determining that claimant was in the course and scope of her employment at the time of the injury. See Texas Workers' Compensation Commission Appeal No. 010564, decided April 19, 2001, and cases cited therein.

Carrier contends that claimant's testimony regarding her injury was not credible and that her knee condition was not caused by a fall at work. We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not 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).

Carrier contends that claimant did not meet her burden because there was no expert medical evidence to show that her preexisting spinal condition was aggravated. The hearing officer determined that claimant sustained a tear in the meniscus of her right knee and also that the degenerative conditions in her lumbar spine were aggravated. From the medical evidence regarding claimant's diagnosis and claimant's testimony about her condition after the fall, the hearing officer could determine that she sustained a right knee meniscal tear and that the fall resulted in the enhancement, acceleration, or worsening of her preexisting spinal condition. See Texas Workers' Compensation Commission Appeal No. 971764; decided October 20, 1997; Texas Workers' Compensation Commission Appeal No. 020262, decided March 19, 2002.

Carrier contends that the hearing officer erred in determining that claimant had disability. Carrier asserts that claimant was able to do her former job, noting that a functional capacity evaluation (FCE) report stated that claimant could lift up to 30

pounds. The hearing officer could consider the FCE and still find that claimant had disability based on the off-work slips in the record. The off-work slips begin the day after the injury and the last off-work slip covers the period from August 12 through October 12, 2003. The off-work slips say claimant is restricted from all work. We perceive no error.

We affirm the hearing officer's decision and order.

According to information provided by carrier, 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

**PRENTICE HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge