APPEAL NO. 033040
FILED JANUARY 6, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A consolidated contested case hearing was held on October 20, 2003, with the record closing on October 21, 2003. With respect to (Docket No. 1), the hearing officer determined that the appellant's (claimant) compensable injury of (date of injury for docket no. 1), does not extend to include an injury to the right knee. With respect to (Docket No. 2), the hearing officer determined that the claimant did not sustain a compensable injury on (date of injury for docket no. 2). The claimant appeals, requesting that the Appeals Panel reform Finding of Fact No. 9 to correct a misstatement and overturn Finding of Fact No. 10 as against the great weight of the evidence. In addition, the claimant asserts that the hearing officer improperly narrowed the issues before him, resulting in errors in Findings of Fact Nos. 4, 6, and 11. The adjuster (who appeared at the hearing and represented both respondent 1 (carrier 1) and respondent 2 (carrier 2) after assuring the hearing officer that there was no conflict of interest in doing so as both carriers belong to the same business group) responded to the claimant's appeal, urging affirmance.

DECISION

Affirmed, as reformed.

The claimant requests that Finding of Fact No. 9 be reformed to reflect that immediately prior to his work with the employer in this claim, the claimant worked as a plumber's helper with a different employer. Our review of the record substantiates that there was evidence that the claimant had indeed worked as a plumber's helper in another city for some unspecified time between the time that he refurbished mobile homes and the time that he began working for the employer as a plumber's helper in May 2001. We reform Finding of Fact No. 9 to conform to the evidence. We decline to overturn the hearing officer's Finding of Fact No. 10 as against the great weight of the evidence. This was a factual determination for the hearing officer to make.

Although there have been two claims filed by this claimant relating to a right knee injury, both claims are based upon the same condition. The first, and primary, contention of the claimant is that he sustained a compensable right knee injury on (date of injury for docket no. 1), at the same time that he injured his low back. He had knelt down with his right knee on the floor, and his left foot on the floor with the left knee bent, and reached down to pull out a floor drain that he belatedly realized was made of cast iron, and was far heavier than he expected. He injured his back pulling on the drain, reported the back injury, and saw a doctor within two days. Although there was a comment made to a physical therapist about the right leg feeling weaker when doing a leg press, there is no specific mention of the right knee in the medical records until January 25, 2002, when the claimant first saw his current treating doctor, Dr. N, a chiropractor. She diagnosed a knee sprain/strain. Dr. N referred the claimant to Dr. J,

an orthopedist. Dr. J ordered an MRI done of the right knee, which showed degeneration of the medial meniscus and a small joint effusion. He recommended arthroscopic partial medial meniscectomy. Dr. J provided a causation letter dated (date of injury for docket no. 2), stating: "In reasonable medical probability, [the claimant] sustained injury to his right knee at the same time he sustained injury to his back on (date of injury for docket no. 1)."

The claimant's second contention that he sustained a repetitive trauma injury to his right knee with a date of injury of (date of injury for docket no. 2), is based on the same causation letter from Dr. J, in which Dr. J states: "It is also reasonable and medically probable that the injury to [the claimant's] right knee may be cumulative overtime [sic] as a result of [the claimant's] regular work duties during the months prior to (date of injury for docket no. 1)." The claimant is asserting that under the repetitive trauma theory of injury, the date of injury is (date of injury for docket no. 2), as that is the date that he first suspected that his injury was a repetitive trauma injury that was caused by his employment. *See* Section 408.007.

With that factual background, as we understand the balance of the claimant's appeal, he is asserting that the hearing officer has improperly narrowed the issues that were before him. The claimant cites to Texas Workers' Compensation Commission Appeal No. 002976, decided February 7, 2001, a case where the Appeals Panel held that a hearing officer erred in defining the nature and extent of the injury in the absence of an extent-of-injury issue before him. We disagree that that decision is controlling in this case, however, because the exact issue that the hearing officer was called upon to decide was: "Does the compensable injury of (date of injury for docket no. 1) extend to include an injury to the claimant's right knee?" We understand that the claimant's argument is that the real issue was whether the right knee injury was part of the original compensable injury, as opposed to a true extent-of-injury issue, but we do not fault the hearing officer for deciding the issue that was presented to him. The claimant also cites Texas Workers' Compensation Commission Appeal No. 001217, decided July 17, 2000, wherein the Appeals Panel reversed the decision of a hearing officer when the hearing officer found that the claimant had sustained a compensable right shoulder injury, but did not sustain a compensable neck injury, when the only issue was whether there was a compensable injury. That decision is also inapplicable to our facts. The claimant argues that there was evidence of a knee sprain/strain and of a small joint effusion in the knee, but that the hearing officer only considered a medial meniscus injury. We agree that the hearing officer discussed only the medial meniscus in detail in the Statement of the Evidence, but his findings and conclusions are not specifically related to the claimed medial meniscus injury only. We are unwilling to attribute to the hearing officer the narrow interpretation that the claimant argues for. The hearing officer stated that even though all of the evidence presented was not discussed, it was considered. We believe that the hearing officer's Findings of Fact Nos. 4, 6, and 11 are reflective of his consideration of all the evidence, and his findings that the claimant did not sustain his burden of showing that the right knee injury was compensable under either a specific injury of a repetitive trauma injury theory.

The claimant had the burden to prove that he sustained a compensable right knee injury. The claimant testified as to the circumstances of his alleged injury. The hearing officer found that the medical evidence along with the claimant's testimony was not sufficient to establish that the claimant sustained a compensable injury. The hearing officer heard the conflicting evidence that was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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). It is clear that the hearing officer was not persuaded that the claimant had a work-related right knee injury under any of the theories advanced at the hearing. Although there was conflicting evidence in this case, we conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer, as reformed.

The true corporate name of insurance carrier 1 is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

The true corporate name of insurance carrier 2 is **VALLEY FORGE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

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Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Thomas A. Knapp
Appeals Judge