

APPEAL NO. 033312
FILED FEBRUARY 5, 2004

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 November 6, 2003. The hearing officer determined that the appellant's (claimant) compensable (right knee) injury of _____, does not extend to, or include an injury to the left knee, and that the claimant reached maximum medical improvement (MMI) on February 12, 2002, as found by the designated doctor whose opinion was not contrary to the great weight of the other medical evidence.

The claimant appeals, contending that the initial treating doctor did not accurately record his history, that the injury to the left knee was caused by overuse due to the right knee injury, that the medical reports of his current treating doctor support a compensable left knee injury, and that his MMI date is the statutory MMI date (See Section 401.011(30)(B)). The claimant also requests that the designated doctor give an impairment rating (IR) for the left knee (IR is not an issue before the hearing officer). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant, a "cooker operator," sustained a compensable right knee injury on _____, when he slipped and fell. The claimant began treating with doctor Dr. A but continued working. The claimant eventually had right knee surgery on May 1, 2001. The claimant missed eight days work and then returned to work at his regular job. In dispute is whether the claimant complained to Dr. A about a left knee injury (Dr. A's records do not indicate such a complaint). The claimant subsequently changed treating doctors to Dr. S in May 2002. The first indication of left knee problems is a letter dated April 15, 2003, which notes that the doctor saw the claimant "for left knee pain. He had injured his left [knee] when he was walking." Dr. S in a letter dated May 8, 2003, then stated the internal derangement of the left knee was secondary to the right knee internal derangement. The claimant argues that his left knee was injured due to over use because of his right knee injury. The carrier contends that the left knee problem is an ordinary disease of life related to the claimant's osteoarthritis of the left knee. The designated doctor examined both knees and in a report dated February 12, 2002, certified MMI that date and did not assess an IR for the left knee.

The testimony and medical evidence were in conflict in regard to the disputed issues and the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the

evidence has established. As an appeal body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The determination on the MMI date is dependent on whether the left knee condition is compensable. Having affirmed the hearing officer's determination on extent of injury, we note that the designated doctor's assessment of MMI has presumptive weight (Section 408.122(c)) and we likewise affirm the hearing officer's determination of the MMI date as not being contrary to the great weight of other medical evidence.

Accordingly, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge