

APPEAL NO. 040179
FILED MARCH 12, 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 was held on December 15, 2003. The hearing officer determined that the compensable injury of _____, does not extend to or include the appellant's (claimant) "diagnosis of left knee torn medial [sic-medial] meniscus." The claimant appeals and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

We have reviewed the complained-of determination and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. Whether or not the claimant's _____, compensable right knee and right ankle injury extends to and includes the claimant's diagnosis of left knee torn medial meniscus presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence, including the medical evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Although there was conflicting evidence presented on the disputed issue, there was evidence from which the hearing officer could find that the left knee injury was from a distinct, nonwork-related activity, and that there was insufficient medical evidence to establish an overuse injury of the left knee. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also asserts that he felt his ex-lawyer had not been serving his best interests during the hearing, having arrived over an hour late and, in the claimant's opinion, being totally unprepared to present the case to the hearing officer. He complains that the attorney would not return his phone calls, and stated that he believes that a more appropriate and timely presentation of information to the hearing officer would have resulted in a decision in his favor. As was stated in Texas Workers' Compensation Commission Appeal No. 94660, decided July 7, 1994, "[t]he reliance on an attorney to preserve a client's rights must be determined on an agency relationship," and the Texas Supreme Court has stated that "an attorney employed to prosecute a claim for workmen's compensation is the agent of the client, and his action or nonaction within the scope of his employment or agency is attributable to the client." Texas Employers Insurance Ass'n v. Wermeske, 349 S.W.2d 90, 95 (Tex. 1961). As in Appeal

No. 94660, *supra*, "[t]here is no evidence that the attorney acted deliberately to injure the client or was guilty of bad faith or fraud on the client" and "[u]nder these circumstances, this is a matter to be resolved between the claimant and his attorney." See Wermske, *supra*, and Texas Workers' Compensation Commission Appeal No. 94030, decided February 15, 1994.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS, INC.** and the name and address of its registered agent for service of process is

**RONALD I. HENRY
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75230.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge