

APPEAL NO. 041105
FILED JULY 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 December 18, 2003, with the record closing on December 19, 2003. In Texas Workers' Compensation Commission Appeal No. 040215, decided March 16, 2004, we remanded the case for reconstruction of the record or a transcription of Dr. T's testimony. The hearing officer held a partial rehearing on remand on April 19, 2004, to obtain the testimony of Dr. T. The hearing officer then reissued her decision which determined that the respondent's (claimant) compensable injury of _____, does not extend to lumbar herniations, but that the compensable injury does extend to a right knee medial meniscus tear, right knee degenerative arthritic changes, and chondromalacia. The hearing officer's determination that the claimant's compensable injury does not extend to lumbar herniations has not been appealed and has become final. Section 410.169.

The appellant (carrier) appeals the determinations regarding the right knee medial meniscus tear, right knee degenerative changes, and chondromalacia on a sufficiency of the evidence basis, citing the reports of several doctors including the conclusions of Dr. T. The carrier also contends that just because it stipulated that the claimant sustained a "compensable right and left knee injury on _____" (we also note that a prior final CCH decision and order also determined that the "compensable injury extends to include both knees"), it was not "agreeing to accept *all* conditions related to that body part." The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant's response was due no later than June 3, 2004 (See Section 410.202(b)), and was filed with the Houston field office on June 17, 2004. The claimant's response, not being timely, is not considered.

It is undisputed that the claimant, a maintenance worker, fell going down a ladder and caught his legs on the ladder. The parties stipulated that the claimant sustained a compensable right and left knee injury on _____. Principally at issue in this appeal is whether the claimed conditions of the right knee are part of the compensable injury. An MRI of the right knee performed on January 30, 2002, had the impression of a complex grade III tear posterior torn, medial meniscus, mild degenerative arthritis, and signs of grade III chondromalacia. The claimant had right knee surgery on March 13, 2002. As noted previously, in evidence is a decision and order dated July 2, 2002, of another hearing officer wherein the parties agreed that the "compensable injury extends to both knees. . . ." The carrier in a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated November 14,

2002, disputed that the claimant's "compensable injury extends to the conditions of arthritis, degeneration, and chondromalacia within the right knee."

Although the carrier presented substantial evidence, including the testimony of Dr. T, that the claimant's right knee conditions are degenerative rather than traumatic in nature, the claimant's treating doctor, in responses dated May 12 and October 21, 2003, to specific questions, explained why he believes the right knee conditions are related to the compensable injury. The carrier, in its appeal, states that it "continues to maintain that the Claimant suffered nothing more than [a] sprain/strain to his right knee on _____, and that the remaining conditions are ordinary diseases of life." Certainly that is not clear in the July 2, 2000, decision and order nor does that position appear to be raised prior to the TWCC-21, dated November 14, 2002.

In any event there was conflicting medical evidence and the hearing officer could choose to believe the reports and records of the treating doctor over that of the other doctors. We have frequently noted that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). This is so even though another fact finder may well have drawn different inferences from the evidence and reached a different result. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

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:

Judy L. S. Barnes
Appeals Judge

CONCUR IN THE RESULT:

Edward Vilano
Appeals Judge