

APPEAL NO. 041619
FILED AUGUST 26, 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 June 9, 2004. With regard to the only issue before him the hearing officer determined that the appellant (claimant) did not have disability due to a compensable injury sustained on _____.

The claimant appealed, contending that the hearing officer erroneously added an extent-of-injury issue and that the claimant did have disability beginning October 29, 2002, through the date of the CCH. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant, an order puller, sustained a compensable injury on _____, when she climbed on a conveyor belt trying to free a jammed "tote." The parties stipulated that the claimant sustained a compensable injury on that date. The claimant testified how her left knee "went through the rollers and [her] right knee was pinned up under [her]." There was conflicting evidence whether the claimant was placed on light duty or continued her regular job. The claimant first sought medical attention on June 2, 2002, at a hospital emergency room where she was treated for a left knee sprain. The claimant was not taken off work or placed on light duty. The claimant testified that about three weeks after her injury she developed "a small pea-sized bump" on her right knee. The claimant continued work (either at her regular job or light duty) until July 17, 2002, when her employment was terminated for poor job performance.

The claimant received no medical treatment from June 2 until October 29, 2002, when she began seeing a doctor, who took her off work on that date. An MRI performed on November 18, 2002, was negative for the left knee. The claimant eventually had surgery on the right knee on January 7, 2004, to remove a mass or cyst. In evidence is a Work Status Report (TWCC-73) releasing the claimant to return to work without restrictions on June 14, 2004.

The hearing officer in discussing the development of the cyst on the right knee commented that the claimant failed to prove the compensable injury includes the right knee cyst and that since the surgery and convalescence was for the right knee cyst "there was no disability associated with the right knee problems or surgery related to the cyst." The claimant contends that the hearing officer erred in adding an issue of extent of injury (in discussing the cyst and right knee surgery for the cyst). We disagree. The

hearing officer was only commenting on why the surgery did not constitute disability as defined in Section 401.011(16). We perceive no error by the hearing officer.

The hearing officer found that the claimant's inability to obtain and retain employment at the preinjury wage after _____, was not due to the compensable injury of that date. The hearing officer offers a fairly detailed summary of the evidence to support that conclusion. We have reviewed the complained-of determinations and conclude that the issue involved a fact question for the hearing officer to resolve. The hearing officer thoroughly reviewed the record and determined what facts were established. We conclude that the hearing officer's determinations 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).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** 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:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge