

APPEAL NO. 041658
FILED AUGUST 31, 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 21, 2004. The hearing officer resolved the disputed issue by deciding that respondent 2's (claimant) compensable injury of _____, does not extend to osteoarthritis of the left knee. The appellant (subclaimant) appealed, contending that the hearing officer's decision is against the great weight of the medical evidence and that the hearing officer erred in not adding an issue regarding whether it is entitled to recover on its subclaim as a result of the compensable injury. Respondent 1 (self-insured) asserts that the evidence supports the hearing officer's decision and requests affirmance. The appeal file does not contain an appeal or a response from the claimant.

DECISION

Affirmed.

In August 2002 the claimant's doctor diagnosed osteoarthritis in the claimant's left knee and in December 2002 the claimant's doctor noted that the claimant may be a candidate for a knee replacement. It is undisputed that the claimant sustained a compensable injury on _____, which included her left knee (the self-insured represented that it accepted a left knee contusion and a left ankle injury), and that she had osteoarthritis in her left knee prior to her injury. In July 2003, which was after the claimant fell at work on _____, the claimant had a preoperative and postoperative diagnosis of osteoarthritis of the left knee and underwent a total left knee replacement. The surgeon performing the knee replacement is associated with the subclaimant. The issue at the CCH was whether the compensable injury of _____, extends to and includes osteoarthritis of the left knee. The contention is essentially that the claimant aggravated her preexisting osteoarthritis, which resulted in her need for the July 2003 knee replacement surgery.

It has been held that to the extent that the aggravation of a preexisting condition or injury causes damage or harm to the physical structure of the employee, the resulting condition falls within the meaning of "injury" as defined in the 1989 Act. Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex. App.-Amarillo 1999, no pet.). The claimant's surgeon wrote that the claimant's work injury exacerbated the claimant's degenerative condition of osteoarthritis necessitating joint replacement surgery. The claimant's doctor wrote that the claimant's current injury exacerbated her underlying condition of osteoarthritis. The hearing officer noted in his decision that the evidence did not persuasively establish any new damage to or acceleration of the preexisting condition. The hearing officer found that the claimant's compensable injury did not worsen or accelerate the osteoarthritic condition of the claimant's knee and determined that the compensable injury does not extend to osteoarthritis of the left

knee. The subclaimant contends that the hearing officer's decision is unsupported by the evidence, is not in keeping with legal concepts of aggravation, and is against the great weight of the medical evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The subclaimant complains that the hearing officer failed to find that the compensable injury aggravated the preexisting arthritic condition despite the self-insured's preauthorization for the total knee replacement surgery. We do not find merit in the subclaimant's assertion that the preauthorization compels a finding that the osteoarthritis is part of the compensable injury by aggravation or otherwise.

Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 134.600(f) (Rule 134.600(f)) provides in pertinent part that the carrier, self-insured in this case, shall approve or deny requests for preauthorization based solely upon the reasonable and necessary medical health care required to treat the injury regardless of unresolved issues of compensability, extent of or relatedness to the compensable injury, or the carrier's liability for the injury, and that the carrier shall include in the approval notice of any unresolved denial of compensability or liability or an unresolved dispute of extent of or relatedness to the compensable injury.

The compensable injury occurred on _____. In evidence is a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated June 10, 2003, in which the self-insured denied any and all liability for the claimant's osteoarthritis on the basis that it is not a part of or related to her compensable injury and that it is an ordinary disease of life not covered under the workers' compensation law. The preauthorization report issued on July 25, 2003, for the July 28, 2003, left total knee arthroplasty, noted the diagnosis of left knee osteoarthritis and specifically provides that the authorization is based on the review of medical necessity only and is not a guarantee of payment; that "per carrier: osteoarthritis is an ordinary condition of life and not covered under workers' comp."; that the insurance carrier should be contacted for further information about compensability and disputes; that compensability of the injury may be denied or the extent of the injury may be disputed; and that the preauthorization determination does not guarantee payment of all or part of the charges for services. The facts of this case reflect that the self-insured's preauthorization approval gave notice of its pending dispute over the compensability of the diagnosed osteoarthritis condition, which is the preoperative and postoperative diagnosis contained in the operative report for the left total knee arthroplasty.

Lastly, the subclaimant asserts that the hearing officer erred in denying its request to add an issue regarding whether it is entitled to recover on its subclaim as a result of the claimant's compensable injury. The hearing officer found that there was not good cause to add that issue. Considering that the subclaimant's claim is

predicated on a determination that the claimant's compensable injury extends to osteoarthritis of the claimant's left knee, we conclude that under the circumstances presented it has not been shown that the hearing officer abused his discretion or committed reversible error in not adding the requested issue. We note that Rule 134.600(c) provides that the carrier is not liable under subsection (b) of Rule 134.600 if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge