

APPEAL NO. 041772
FILED SEPTEMBER 1, 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 June 14, 2004. The hearing officer determined that the _____, compensable injury of respondent 1/cross-appellant (claimant) extends to include an injury to the right knee. Appellant/cross-respondent, Liberty Mutual Insurance Company (carrier B), was the carrier for claimant's employer regarding the _____, injury. The hearing officer also determined that claimant sustained an intervening injury to his right knee, "thereby relieving carrier A of the further liability for this claim." Respondent 2, Facility Insurance Company (carrier A), was the carrier for claimant's employer on February 28, 1991, when claimant sustained the prior compensable right knee injury. Carrier B appealed the determination that carrier A is relieved of liability for the 1991 injury, contending that carrier A did not meet its burden to prove sole cause. Carrier B also appeals the determination that the _____, injury extends to the right knee. Claimant responded and agreed that carrier A should not be relieved of liability. Claimant also filed a cross-appeal, but it was not timely filed and will not be considered. The file does not contain a response from carrier A.

DECISION

We affirm in part, as reformed, and reverse and render in part.

In Finding of Fact No. 8, the hearing officer referred to claimant's left knee rather than his right knee. It is clear that the hearing officer meant to refer to the right knee. Therefore, we reform that fact finding to substitute the words "right knee" for the words "left knee."

Carrier B appeals the determination that the _____, compensable injury extends to the right knee. Carrier B's argument on appeal is that the evidence is not credible and does not support claimant's contention. We have reviewed the complained-of determinations and conclude that the issue regarding extent of injury involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and 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).

Carrier B appeals the determination that carrier A is relieved of liability for the February 28, 1991, right knee injury. Claimant testified that he had sustained a compensable injury on February 28, 1991, when he twisted his right knee. The hearing officer determined that: (1) claimant subsequently developed traumatic osteoarthritis of the right knee "as a result of the 1991 right knee injury"; and (2) claimant's osteoarthritis was aggravated by "an altered gait and falls caused by left give-way weakness caused

by the 2001 compensable low back injury.” The hearing officer did not determine that claimant does not suffer any effects of the 1991 injury or that the 2001 injury is the sole cause of the current condition of claimant’s right knee. Carrier A had the burden to prove that the claimant’s subsequent injury of _____, was the sole contributing factor to the claimant’s current condition or disability. Texas Workers’ Compensation Commission Appeal No. 033368, decided February 19, 2004. The evidence and the hearing officer’s findings of fact do not support a determination that the 2001 compensable injury is the sole cause of the current condition of claimant’s right knee. Therefore, the hearing officer erred in determining that carrier A is relieved of liability.

We affirm that part of the hearing officer’s decision and order that determined that the _____, compensable injury extends to and includes an injury to the right knee. We reverse that part of the hearing officer’s decision and order that determined that carrier A is relieved of liability for the right knee injury due to the occurrence of an intervening injury. We render a decision that carrier A is not relieved of liability for the February 28, 1991, right knee injury. We reform Finding of Fact No. 8 to substitute the words “right knee” for the words “left knee.”

According to information provided by carrier A, the true corporate name of the insurance carrier is **FACILITY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**KATHLEEN THOMPSON, V.P.
2003 EAST LAMAR, SUITE 100
ARLINGTON, TEXAS 76006.**

According to information provided by carrier B, the true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica L. Ruberto
Appeals Judge