

APPEAL NO. 042737
FILED DECEMBER 7, 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 October 12, 2004. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not include an injury to the anterior cruciate ligament (ACL) of the right knee after May of 1999. The appellant (claimant) appeals, disputing the determination of the hearing officer. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed as reformed.

It was undisputed that the claimant sustained a compensable injury on _____. The parties stipulated that the self-insured accepted a meniscus tear, a partial tear of the ACL which has resolved, and a strain of the right knee and has paid benefits for this injury. At issue was whether the compensable injury of _____, included an injury to the ACL of the right knee after May of 1999. The evidence reflected that the claimant was returned to work full duty after his _____, compensable injury on February 17, 1999, and that his treating doctor placed him at maximum medical improvement (MMI) on February 16, 1998, with a 0% impairment rating. The claimant testified that he was playing basketball in May of 1999 and his leg gave way. The claimant sought medical treatment after the incident playing basketball and acknowledged he told his doctor that he heard his knee pop. He was subsequently diagnosed with a partial tear of the ACL of his right knee. The hearing officer found that the medical evidence presented does not preponderate to show that the current condition of the claimant's right knee, including the torn ACL is due to the injury of _____.

The extent-of-injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence under Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In the instant case, the parties stipulated that the self-insured accepted as part of the _____, compensable injury a partial tear of the ACL that has resolved. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to

reverse that determination on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant appealed Finding of Fact No. 4 which reads as follows: "After undergoing surgery to repair the meniscus tears in his right knee, the Claimant attained (MMI) on February 16, 1998." The claimant argues on appeal that he did not have surgery on his right knee. In evidence were the claimant's answers to interrogatories which stated that he did not have surgery in 1997. The evidence did reflect that the claimant had surgery but it was to his left knee in 1977. There is no indication in the record that the claimant underwent surgery to repair meniscus tears in his right knee. Therefore, we reform Finding of Fact No. 4, striking the following language "[a]fter undergoing surgery to repair the meniscus tears in his right knee," to conform to the evidence.

We affirm the decision and order as reformed.

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

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge