

APPEAL NO. 032940  
FILED DECEMBER 30, 2003

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 October 15, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable right knee injury on \_\_\_\_\_, and that the claimant had disability from \_\_\_\_\_, through the date of the CCH. The appellant (carrier) appealed, contending that the hearing officer's determinations on the disputed issues are not supported by sufficient evidence and are against the great weight of the credible evidence. No response was received from the claimant.

DECISION

Affirmed as reformed.

We reform the hearing officer's decision to reflect that Carrier's Exhibit No. 6 are records from the (clinic) and that Carrier's Exhibit No. 6 was admitted into evidence. We also reform the hearing officer's decision to reflect that Carrier's Exhibit No. 7 are time logs and that Carrier's Exhibit No. 7 was not admitted into evidence.

The carrier contends that exclusion of the time logs from evidence was improper. We disagree because the record reflects that the carrier failed to exchange the time logs with the claimant, and the hearing officer did not find good cause for the carrier's failure to exchange those records. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). Additionally, if there was any error in not admitting the time logs into evidence, we do not believe that the carrier has shown reversible error. To obtain reversal of a decision based upon the admission or exclusion of evidence, the appellant must show that the ruling was in error and that the error was reasonably calculated to cause and properly did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 91003, decided August 14, 1991. The carrier's stated purpose for introducing the time logs into evidence was to show that the claimant had missed some time from work for a purported preexisting right knee condition prior to the claimed injury of \_\_\_\_\_. There was testimony about the claimant's preexisting right knee condition as well as missed time from work, and based on that testimony the hearing officer stated in his decision that the claimant had lost some time (from work) in the past, apparently because of his right knee condition, prior to \_\_\_\_\_. Thus, the hearing officer did consider the claimant's preexisting right knee condition and his missed time from work for that condition even in the absence of the time logs.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Generally, in workers' compensation cases, the issues of injury and

disability may be established by the claimant's testimony. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). It has also been held that to the extent that the aggravation of a prior injury caused damage or harm to the physical structure of the employee, it can be said that the resulting condition falls within the meaning of "injury" as defined by the 1989 Act. Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex. App.-Amarillo, no pet.). 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. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations that the claimant sustained a compensable right knee injury on \_\_\_\_\_, and that he had disability from \_\_\_\_\_, through the date of the CCH, are supported by sufficient evidence and are 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).

As reformed, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

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Robert W. Potts  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Thomas A. Knapp  
Appeals Judge

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Edward Vilano  
Appeals Judge