

## APPEAL NO. 990253

Following a contested case hearing (CCH) on January 12, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant) did not sustain a compensable injury to her knee on \_\_\_\_\_. Claimant has appealed on factual sufficiency grounds. The respondent (carrier) responded and urged the sufficiency of the evidence to support the challenged determination.

### DECISION

Affirmed.

Claimant testified that she has been employed by (employer) for about 12 years; that she worked for the employer as a computer operator before developing carpal tunnel syndrome (CTS) for which she had surgery; that she subsequently worked for the employer in the housekeeping department; and that on \_\_\_\_\_, she sustained two injuries while cleaning mirrored columns in different departments. She stated that her first injury occurred at about 11:00 a.m. on \_\_\_\_\_ when she squatted down to clean a mirrored column near the base and pulled something in her knee, and that the second injury occurred later that day when she was bent over cleaning another mirrored column and had a catch in her back and could not straighten up for several minutes. Claimant said she finished her shift that day and on the following Sunday, apparently (the following Sunday after the date of injury), according to the medical records, was sent by the employer to (clinic) for medical treatment. She indicated that her claimed back injury was accepted by the carrier but her knee injury was denied; that in order to obtain medical care for her knee, which included exploratory arthroscopic surgery in January 1997 by Dr. K, she had to use her group health insurance; and that in order to use her group health insurance, she had to indicate on the forms that her injury was not work related.

According to the (the following Sunday after the date of injury), notes of Dr. B in the clinic records, claimant gave a history of being back at work for six weeks after carpal tunnel surgery; of bending over cleaning columns and, when straightening up, having sudden, sharp pain and not being able to stand up fully; and of having pain into her right leg two days later. Dr. B, who noted that claimant was morbidly obese, diagnosed lumbar strain. A clinic radiology report of December 11, 1996, signed by Dr. M, reflects that an x-ray of claimant's right knee was positive for degenerative change. A clinic record of December 11, 1996, states that claimant's back is better but still painful and that she complains of right knee pain, and reflects that the diagnosis of right knee sprain, degenerative changes (arthritis) was added.

In her handwritten December 27, 1996, letter to "[Ms. S]," identified at the CCH as an employee in the employer's human resources office, claimant stated that an MRI has

revealed that she has cartilage damage, that she is on crutches, and that "this is NOT workers comp," noting that she used her group health insurance. Claimant asks Ms. S to turn in "sick pay" for her. In a March 19, 1997, claim for disability payments, signed by claimant on March 25, 1997, a box is checked to indicate that the injury is not work related. In her handwritten April 2, 1997, note to "D," identified at the hearing as Ms. F, an employee in the employer's human resources office, claimant forwards her medical record on her knee and asks that her claim "for I.P.P." be processed "ASAP" as she is "broke."

Dr. K's January 15, 1997, report states that claimant was referred by Dr. W after an MRI scan demonstrated a torn knee cartilage; that she had been placed in housekeeping after having been off work for a year following surgery; and that in early December 1996, she suddenly began having symptoms of right knee pain which became acute on \_\_\_\_\_. Though this typewritten report states in the history portion that claimant's knees were operated on, the copy in evidence has a handwritten correction to reflect that it was claimant's wrists that had been operated on. Dr. K's January 29, 1997, operative report stated the postoperative diagnosis as medial femoral condyle chondrolysis with early degenerative changes.

A June 26, 1997, report of Dr. R stated that claimant, who is 54 years of age, presented for evaluation of her right knee; that she has had pain since her knee surgery by Dr. K, who has since closed his office; that x-rays reveal some medial compartment osteoarthritis and patellofemoral disease; and that his diagnosis is mild osteoarthritis, right knee. Dr. R further stated the following: "[Claimant] has asked me to assist in her case documenting this is a workers' comp case. The patient's stated history, the findings at the time of surgery per [Dr. K's] notes and her clinical history are all consistent with a knee injury that could occur at work. This is the history that the patient provided to me in the office today."

Claimant further indicated that at a previous CCH, another hearing officer determined that her knee injury was a separate injury and that is why she filed another report of injury and is having the second CCH. Claimant also stated that between 1996 and the current CCH date, she had two CTS injury claims, the back injury claim, and the knee injury claim, and that she was off work for much of 1996 and 1997 due to the CTS injuries.

In evidence is a decision and order of another hearing officer, who presided over claimant's CCH on November 5, 1997. According to this decision and order, the disputed issue was whether claimant's compensable injury of "(incorrect date of injury) [sic], 1996," extended to her right knee. That hearing officer found that claimant injured her back "on (incorrect date of injury) [sic], 1996," while bent over cleaning a mirrored column; that she had been having right knee pain for about one and one-half hours before sustaining the back injury; that the incident causing her back injury is unrelated to her claimed right knee injury; and that on "(incorrect date of injury) [sic], 1996," before injuring her back, she injured her right knee in the course and scope of her employment. That hearing officer concluded that claimant's compensable injury of "(incorrect date of injury) [sic], 1996," does

not extend to her right knee and that whether she sustained a compensable injury to her right knee on "(incorrect date of injury) [sic], 1996," was not an issue. Despite this decision's consistent reference to the injury date as \_\_\_\_\_, the transcript of the November 5, 1997, hearing, which is in evidence, reflects that when the hearing officer first stated the injury date as (incorrect date of injury) th, he was advised that the injury date was \_\_\_\_\_. Further, all the stipulations at that hearing referred to the \_\_\_\_\_, date. Also, at the hearing we now consider, claimant testified that the claimed injury date was \_\_\_\_\_, and the parties entered into certain stipulations stating that date.

In evidence is an employer's workers' compensation accident investigation report dated (the following Sunday after the date of injury), stating the incident date as \_\_\_\_\_, the date reported as (the following Sunday after the date of injury), the body parts injured as back, right hip, knee, and ankle, and the nature of the incident as vacuuming and cleaning mirrors and feeling a snap and pain in the back. Also in evidence is the carrier's Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21), dated December 31, 1996, disputing any knee injury for the reasons that claimant's "testimony" was that she sustained a low back injury and per Dr. M, claimant had degenerative changes with no signs of an acute right knee injury. Also in evidence is claimant's Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) which she signed on November 26, 1997, reflecting a right knee injury on \_\_\_\_\_. This form was apparently filed in reaction to the previous decision and order from which, incidentally, no appeal was taken.

In her closing statement, claimant stated that she was "not arguing res adjudicata," obviously referring to the other hearing officer's finding of a right knee injury in the course and scope of employment on \_\_\_\_\_, and contended that the evidence she adduced at the hearing was "ample" to prove that she sustained the claimed knee injury. The carrier argued that claimant's knee condition was an ordinary disease of life and that she did not sustain a knee injury on \_\_\_\_\_, as she claimed.

The hearing officer found that claimant's knee injury is the result of a degenerative condition and not of a discrete aggravating incident and that she did not sustain a knee injury in the course and scope of employment on \_\_\_\_\_.

Claimant had the burden to prove that she sustained the claimed injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, a disputed issue of injury can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v.

Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could consider the medical evidence indicating that claimant's knee condition was degenerative and could also decide what weight to give claimant's testimony concerning a specific trauma to her knee on \_\_\_\_\_, in view of the conflicts and inconsistencies in the evidence.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill  
Appeals Judge

CONCUR:

Elaine M. Chaney  
Appeals Judge

Judy L. Stephens  
Appeals Judge