APPEAL NO. 93995

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001, *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01, *et seq*.). On September 7, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The record was subsequently closed on October 5, 1993. The issues agreed upon at the CCH were:

a.Whether the Claimant sustained an injury to his knee and back in the course and scope of employment; and

b.Whether the Claimant had disability as a result of the claimed injury of (date of injury).

The hearing officer determined that the appellant, claimant herein, did not sustain an injury in the course and scope of his employment on (date of injury), and consequently had no disability therefrom.

Claimant disagrees with the hearing officer, urges that the evidence supports an injury occurred and claimant has disability, and requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant testified that he was employed by (employer), employer herein, a concern that supplies temporary employees to various companies. Claimant testified that on (date of injury), (all dates are 1993 unless otherwise noted) he was working on an assembly line packaging school books, when his foot, or feet slipped, causing him to injure his right knee when it hit a machine and injuring his back as he slipped. Claimant testified he rested a few minutes and then resumed work. Claimant states he reported his injury Friday, (date) when he got his paycheck and that the employer sent him to (Clinic). Claimant testified he has been unable to work since (date).

Claimant was seen at the Clinic on March 29th for a "knee contusion" and "L-S strain." The report of tests that day was "unremarkable" and claimant was released to limited duty that date. In a follow-up on April 7th, the diagnosis was "[1] Contusion of right knee, [2] Resolving L-S Strain" with comment "No prolonged standing, walking, climbing til recheck." Claimant was placed on "Restricted work." On April 27, claimant was again seen at the Clinic with a diagnosis of "Contusion [R] knee & low back strain." Claimant was placed on restricted work status with sedentary work and note "See Referral to Orthopedist." Claimant was subsequently seen by (Dr. H) on May 5th. Dr. H records in the history that claimant's ". . . right knee got caught in the machine, pushing his kneecap to one side. He also hurt his lower back at the same time." Claimant at that time was also complaining of "occasional headaches with aching to his right wrist and pain to his right shoulder." Dr. H's

diagnosis was "1. Lumbar strain with somatic dysfunction 2. Rule out disc syndrome 3. Right knee strain." Claimant returned to Dr. H on May 11th, May 20th, May 24th, May 25th, August 27th and August 30th for continued complaints of pain in his low back and pain to his right knee. The diagnosis remained the same and prognosis was "guarded."

Claimant in his appeal states that "Also enclosed for the Panel's consideration is a report from [Dr. H] dated October 8, 1993, (the record of the CCH was closed on October 5th) . . . which shows: . . . (2) Lumbar disc syndrome with herniated disc at L-4, L-5." No such report was attached to the appeal that the Appeals Panel has before it. Further, as carrier points out, we are limited in our review to the record developed at the CCH. (*See* Section 410.203(a)(1)).

Carrier's position at the CCH, and on appeal, is that claimant did not have an accident, did not sustain an injury and only told the employer that he wanted to see a doctor without specifying why. Carrier also introduced testimony from a coworker who testified that they worked in an open area and she did not see claimant get hurt or express that he got hurt. Carrier also introduced some statements claimant had allegedly made that he was going to sue employer to get some compensation.

The hearing officer determined that claimant had not sustained an injury in the course and scope of his employment as alleged on the date in question. Claimant in his appeal summarizes the evidence to support his allegations and alleges the medical records support his contentions of an injury as alleged.

The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer was in a position to hear the witnesses, including claimant, and observe their demeanor. That the claimant is the only witness to an injury does not defeat an otherwise valid claim; however, as the claimant's testimony is that of an interested party, his testimony only raises an issue of fact (Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ)), and the hearing officer as the trier of fact has the responsibility to judge the credibility of the claimant and the weight to be given his testimony in light of the other testimony in the record. Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The hearing officer may believe all, part or none of the testimony of any witness. Taylor v. Lewis, 553, S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, no writ). The hearing officer chose not to believe claimant's allegations. It is within the fact finder's province to believe one witness and disbelieve another, or to believe part of the testimony of a witness and disbelieve any other part. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. Civ. App.-Corpus Christi 1983, writ ref'd n.r.e.).

Because we are affirming the hearing officer's determination that claimant did not sustain a compensable injury, as claimant alleged, on (date of injury), that is also dispositive of the issue of disability in that claimant cannot incur disability, as defined in Section 401.011(16) in the absence of a compensable injury. Consequently no further discussion on this issue is warranted.

An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we would reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not so find.

The decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge