APPEAL NO.980005

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 December 11, 1997. The issues at the CCH were injury and disability. The hearing officer found that on _____, the respondent (claimant herein) suffered an injury to his left knee in the course and scope of his employment and that as a result the claimant was unable to obtain or retain employment from August 22, 1997, through the date of the CCH. The appellant (carrier herein) files a request for review challenging specific findings of the hearing officer and arguing that the hearing officer erred in finding a compensable injury and disability. The appeal file contains no response from the claimant.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarized the evidence and we adopt his rendition of the evidence. We will therefore only briefly touch on the evidence germane to the appeal. This includes testimony by the claimant that he injured his left knee on _____, when pushing shopping carts in a parking lot as part of his job duties. (Dr. R) became the claimant's treating doctor. Dr. R stated in a report of October 27, 1997, that "one must assume with high medical probability that the traumatic arthritic flare-up, as well as the possibility of a meniscul tear occurred with this injury." An MRI showed "[s]evere chronic tear of the medial meniscus extending to both articular surfaces." The carrier denied the injury putting forth evidence that the claimant had been disciplined at work prior to alleging injury and had told a coworker that he was injured at home. The carrier also argued that any problem the claimant had with his knee was due to an ordinary disease of life.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. 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. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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 should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and 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).

The present case is clearly one that involves conflicting evidence. It was up to the hearing officer to determine what weight to give that evidence and we do not find that his determination was contrary to the overwhelming weight of the evidence. Nor do we think cases cited by the carrier in which repetitive walking was the alleged mechanism of injury are at all relevant to the present case. Here, the claimant testified that he was pushing a number of shopping carts in a parking lot and, to twist them around he had to apply pressure to his legs, causing his left knee to pop. This case involves more than mere walking and the claim is based on a specific incident and not on repetitive trauma. *See* Texas Workers' Compensation Commission Appeal No. 960307, decided March 25, 1996.

The carrier's attack on the hearing officer's disability finding is based solely on its contention that he should not have found a compensable injury. By rejecting its argument concerning injury, we necessarily reject its argument concerning disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge