APPEAL NO. 990106

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 8, 1998. She (hearing officer) determined that the respondent (claimant) injured only his right knee in the course and scope of his employment on _____, and that he had disability from August 18, 1998, continuing through the date of the hearing. The appellant (carrier) requested review, urging that the evidence is not sufficient to support the determinations of the hearing officer that the claimant sustained a compensable injury and had disability and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not sustain a compensable injury and did not have disability. The claimant responded, urging that the evidence is sufficient to support the determinations of the hearing officer and requesting that her decision be affirmed. The claimant did not appeal the determination that he injured only his right knee in the course and scope of his employment.

DECISION

We affirm.

The claimant testified that on _____, he stayed at his apartment to have a conference telephone conversation with two of his supervisors; that he was seated at his desk in a stationary chair; that during the conversation he turned to get a piece of paper and struck the front of his kneecap on the corner of the desk; that they talked for about 10 minutes after he struck his knee; that because of the seriousness of the conversation, he did not tell the supervisors that he had struck his knee; that after the conversation was completed, he sat there for a few minutes rubbing his knee; that he tried to get up; that he fell, hurting his left knee when it struck the floor and wrenching his right shoulder trying to catch himself; that he did not work the remainder of the day; and that the next day he called another supervisor, told her about the injury, and was told to report the injury to his local office. He said that he was referred to Dr. S, a chiropractor. He stated that he had prior injuries to one knee about 20 years ago and to the other knee about 18 years ago, that he had aches in his knees when the weather was cold, but that he could do normal things with his legs and had recovered from those injuries. The claimant stated that he was taken off work by Dr. S, that he has not been released to return to work, that he uses a cane to walk, that his job involves a lot of walking, and that he could not work because of his injury to his knee.

Dr. S testified that he referred the claimant to an orthopedic surgeon; that an MRI revealed a tear in the medial and lateral meniscus; that the claimant could not work until the tears are repaired; that such injuries could result from stress on the knee; that history taken from the claimant indicates that he hit his knee, flinched, and heard a pop; that in his opinion the tears did not occur when the claimant hit his knee, but did occur when he flinched; and that the telling thing for him was that the claimant heard a crisp pop. Medical notes dated September 2, 1998, indicated that the claimant hit his knee on the corner of a

desk; that it hurt; that he felt a pop; and that he immediately had burning, throbbing, swelling, and a numbing sensation.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and it 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). That a different factual determination could have been made based upon the same evidence is not a sufficient basis to overturn the determination of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. In its appeal, the carrier stated that Dr. S said that in order to have a meniscal tear there had to be some weight bearing involved; but the record indicates that Dr. S clarified his general comment about weight bearing and testified that there does not have to be weight bearing to get a meniscal tear and that such a tear could be caused by twisting or flinching such as the claimant did after he felt the pain from striking his knee and that the claimant's hearing the pop was the telling thing for his opinion. The hearing officer's determinations that the claimant injured his right knee in the course and scope of his employment and had disability beginning August 18, 1998, and continuing through the date of the hearing are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Judy L. Stephens
Appeals Judge