APPEAL NO. 990475

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 February 5, 1999. The issues at the CCH were injury, timely report of injury and disability. The hearing officer found that the appellant (claimant herein) did not suffer a compensable injury as a result of his work duties and did not have disability. The hearing officer found that the claimant timely reported an injury to his employer. The claimant appeals several of the factual findings and legal conclusions of the hearing officer bearing on the issues of injury and disability. The claimant argues that these findings were contrary to the evidence and in many instances supported by no evidence. The respondent (carrier herein) argues that the decision of the hearing officer was supported by the evidence. The carrier argued that the evidence failed to establish that the claimant was at any greater risk than the general public to injury. Neither party appealed the hearing officer's resolution of the timely reporting issue and, since his findings on this issue have become final pursuant to Section 410.169, we shall not address this matter further.

DECISION

Affirmed.

The claimant testified that he worked for most of a 15-year period as a field representative for an insurance company servicing a territory in West Texas. The claimant testified that this involved a great deal of travel, including a lot of driving. The claimant testified that he drove over 50,000 miles per year in his company vehicle and a number of other miles in rental vehicles. The claimant testified that he began in the fall of 1997 to experience pain in his knees. The claimant testified that he consulted with Dr. G, an orthopedic surgeon who had treated him for a prior nonwork-related right knee injury in _____. Dr. G treated the claimant, eventually diagnosing the claimant with early degenerative joint disease in both knees and with patellofemoral syndrome, bilateral knees. Dr. G stated in his reports and his live testimony that the claimant's knee condition was related to repetitive trauma at work. Dr. M, who saw the claimant on referral from Dr. G, expressed the same opinion. The Texas Workers' Compensation Commission (Commission) sent the claimant to Dr. E for a medical examination and his opinion concerning causation of the claimant's injury. Dr. E also related the claimant's condition to his work.

Dr. G placed the claimant under restrictions on April 6, 1998, due to his injury. The claimant testified that his employer could not accommodate these restrictions and he has not worked since. Dr. G stated that these restrictions are permanent.

The claimant challenges the following findings of fact and conclusions of law in the hearing officer's decision:

FINDINGS OF FACT

4. The Claimant has early degenerative joint disease and a pain syndrome in both knees.

* * *

8. The Claimant's early degenerative joint disease and patellofemoral syndrome are problems to which the general public is subject.

9. The Claimant experienced no greater danger to himself because of his occupation.

10. The Claimant's work may have triggered the pain and symptoms in the Claimant's knees, but they [sic] did not cause the knee problems.

11. The Claimant did not sustain a compensable injury as a result of his work duties.

12. The Claimant was not unable to obtain or retain employment at pre-injury wages as a result of the claimed injury of _____, or April 6, 1998.

CONCLUSIONS OF LAW

3. The Claimant did not sustain a compensable occupational disease in the form of a repetitive trauma injury.

4. The Claimant did not sustain disability as a result of the claimed injury of _____, or April 6, 1998.

Section 401.011(26) states as follows:

"Injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm.

Section 401.011(34) provides as follows:

"Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed

outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 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). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

It is troubling when a hearing officer's decision is contrary to the uncontroverted medical evidence in the record. This is particularly so when one of those medical opinions is from a doctor chosen by the Commission to express opinion on the issue at hand. However, it is up to the fact finder to determine what weight to give to the medical evidence. We have, on numerous occasions, held that the Appeals Panel should not set aside the decision of a hearing officer because the hearing officer may have drawn inferences and conclusions different than those the Appeals Panel deems most reasonable, even though the record contains evidence of inconsistent inferences. Garza*, supra;* Texas Workers' Compensation Commission Appeal No. 93334, decided June 14, 1993; Texas Workers' Compensation Commission Appeal No. 93053, decided March 1, 1993; Texas Workers' Compensation Commission Appeal No. 92539, decided November 25, 1992.

Also, in this particular case, the mechanism of injury is less than clear. In any case, we do not find a sound basis to reverse the determination of the hearing officer that the claimant did not suffer a compensable injury. This does not mean that we do not find some of the findings of the hearing officer, particularly Finding of Fact No. 10, to be problematic.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. *See* Section 401.011(16).

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR IN THE RESULT:

_____
Alan C. Ernst
Appeals Judge

CONCUR IN THE RESULT:

_____
Dorian E. Ramirez
Appeals Judge