APPEAL NO. 990622

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 February 16, 1999. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury on _____, and that he reached maximum medical improvement on April 15, 1998. The hearing officer determined that the claimant's compensable injury sustained on _____, does not extend to and include a C3-4 herniated disc or a lumbar injury; that the report of Dr. P, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, certified that the claimant's impairment rating (IR) is six percent; that Dr. P's report is entitled to presumptive weight; that the great weight of the other medical evidence is not contrary to Dr. P's report; and that the claimant's IR is six percent. The claimant appealed, urged that the determinations adverse to him are so against the great weight and preponderance of the evidence as to be manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The carrier responded, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that his decision be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a detailed statement of the evidence, including summaries of medical records of doctors who treated the claimant. Briefly, on _____, the claimant was on one knee removing gum from a floor when a door was opened and struck his knee. The claimant was first seen for the injury on October 14, 1996, by Dr. R, a doctor he had been seeing for other problems, including headaches. The claimant testified that he told Dr. R that he had fallen on his back and that he hurt his knee, back, and neck. The first medical report of Dr. R does not mention the fall on the back or injury to the back and neck. Dr. R referred the claimant to one doctor for his headaches and to another doctor for his knee injury. In August 1997 the claimant used his wife's health insurance to see Dr. S. A report from Dr. S is the first one to state that the claimant told him that the blow to his knee caused him to fall on his back. The claimant said that he could not explain why earlier reports of doctors did not mention that he fell on his back. Dr. P completed three Report of Medical Evaluation (TWCC-69) forms dated April 15, 1998. He certified that the claimant's IR for the knee injury is six percent. He also stated that it was not clear in his mind that the neck injury was related to the work injury, but that the impairment for the neck injury is seven percent. Dr. P also wrote that in his opinion the lumbosacral spine injury was not necessarily related to the work injury, but that the impairment for it is nine percent.

We first address the determinations that the claimant's compensable injury does not extend to the neck and low back. The claimant has the burden of proving the extent of the injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12,

1994. 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). In his Decision and Order, the hearing officer stated that the evidence was not sufficient to establish a causal connection between the claimant's neck and back conditions and the on-the-job injury and noted that there was no mention of back and neck injuries until August 1997. The determinations of the hearing officer that the claimant's compensable injury does not extend to or include injuries to the neck and low back 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). Since we find the evidence sufficient to support those determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We next address the determination that the claimant's IR is six percent. The claimant does not disagree with the impairments Dr. P assigned for injuries to his knee, low back, and neck. He contends that his IR should be 20% because the compensable injury extends to his low back and neck. We have affirmed the determinations of the hearing officer that the claimant's compensable injury does not extend to his low back and neck. We affirm the determination that the claimant's IR is six percent for the compensable injury.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Judy L. Stephens
Appeals Judge