APPEAL NO. 990698

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 March 8, 1999. The issues at the CCH were injury and disability. The hearing officer determined that the respondent (claimant herein) had a compensable injury to his right knee on _____, and had disability from September 4, 1998, continuing through the date of the CCH. The appellant (carrier herein) files a request for review arguing that these determinations were contrary to the evidence. The claimant responds that these determinations were sufficiently supported by the evidence.

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 summarizes the evidence in the decision and we adopt her rendition of the evidence. We will only briefly touch on the evidence germane to the appeal. The claimant testified that on _____, he injured his right knee when it struck a cart he was pulling after he was bumped by a forklift. Various coworkers testified concerning the incident. All agreed that something happened, although they differed in whether or not they actually saw the claimant hit by the forklift. It was undisputed that the claimant immediately reported an injury and was sent to the company doctor. The claimant testified that he returned to the place of employment wearing a brace and on crutches. The carrier produced evidence that the employer was willing for the claimant to return to work under the restrictions given him by the company doctor. The claimant testified he was unable to work due to the swelling in his right knee. The claimant testified he followed up his treatment with his family doctor, who placed him off work, and then later treated with Dr. O, who also placed him off work.

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).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298,299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case, the hearing officer found an injury and this was supported by the testimony of the claimant, the medical evidence and some of the testimony of the other witnesses. We cannot say that the hearing officer was incorrect as a matter of law in finding an injury.

Disability is also a question of fact. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. In the present case, the hearing officer's finding of disability is supported by the testimony of the claimant and the medical evidence. Bona fide offer of employment was not an issue and therefore we find no relevance in whether or not the employer had work available consistent with the company doctor's work restrictions. In any case, the claimant was later put on a total off-work status by other doctors.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Thomas A. Knapp
Appeals Judge