APPEAL NO. 990979

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 April 13, 1999. The respondent (claimant) sustained a compensable injury to his left knee on _____. The hearing officer determined that the claimant did not engage in any activity other than walking which independently caused him to experience problems with his right knee; that the medical evidence shows that the problems the claimant has experienced in his right knee subsequent to the date of the compensable left knee injury were caused by his inability to bear weight equally with both legs, thus altering his gait; that the claimant's right knee problem flowed naturally from the primary injury that the claimant sustained on _____; and that the compensable left knee injury sustained by the claimant on _____, extends to and includes a right knee injury. The appellant (carrier) requested review, urging that the evidence is not sufficient to support the determinations of the hearing officer and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's compensable left knee injury does not extend to his right knee. The claimant responded, urging that the evidence is sufficient to support the determinations of the hearing officer and requesting that her decision be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a lengthy statement of the evidence that includes quotations from reports of Dr. G, the claimant's treating doctor; and Dr. D, the claimant's brother, who opined that the claimant's right knee condition is a result of the altered gait caused by the injury to his left knee; and from Dr. L, who examined the claimant at the request of the carrier; and Dr. M, who reviewed the records of the claimant at the request of the carrier, who opined that the right knee condition is not a result of the injury to the left knee. The claimant testified that he injured his left knee in October 1993, that that condition resolved, that he returned to work, and that he again injured his left knee at work on _____. He said that Dr. W performed arthroscopic surgery on his left knee in May 1996; that he did not receive medical treatment for some time; that he attempted to see a doctor, but that the doctor would not see him because he did not treat workers' compensation patients; that Dr. G became his treating doctor in September 1997; that Dr. G performed a second arthroscopic surgery on the left knee in December 1997; that the surgery included placing screws in his knee; that Dr. G told him that it could take up to six months for his left knee to heal; that he used crutches a lot and placed his weight on his right knee; that his right knee was not treated because he went to the doctors for his left knee; that in August 1998, Dr. G saw how swollen his right knee was and mentioned it in a medical record; but that he had told Dr. G about his right knee before that.

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. 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 a case such as the one before us where both parties presented evidence on the disputed issue, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could 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). At the hearing, the carrier cited Appeals Panel decisions and cites one of those Appeals Panel decisions in its appeal. In her Decision and Order, the hearing officer stated that she reviewed numerous Appeals Panel decisions concerning altered gait and follow-on injuries; that in some of the decisions the follow-on injury was found to be compensable and in others it was not; and that it was generally a question of fact whether the subsequent injury naturally resulted from the primary injury. There is no indication that the hearing officer did not properly apply the law to the facts. The hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Alan C. Ernst
Appeals Judge