APPEAL NO. 991538

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 June 29, 1999. The issue at the CCH was whether the compensable injury sustained by the respondent (claimant herein) on _____, extended to and included the right knee. The hearing officer concluded that it did. The appellant (carrier herein) files a request for review essentially arguing that this determination was contrary to the great weight and preponderance of the evidence. There is no response from the claimant to the carrier's request for review in the appeal file.

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 parties stipulated that the claimant sustained a compensable injury to her left knee on _____. The claimant testified that her injury took place when a hydraulic chair in which she sat at work collapsed, pinning her legs under the chair. The claimant testified that in extricating herself from the chair, she felt her left knee pop. She later underwent surgery on her left knee to repair a tear of her meniscus. The claimant testified that she injured her right leg as well as her left leg during her compensable injury even though her left leg was initially far more symptomatic.

Medical records support the claimant's contention that her injury included an injury to her right leg. Dr. H, who examined the claimant at the request of the Texas Workers' Compensation Commission (Commission), stated, in part, as follows, in a February 19, 1999, letter to the Commission:

> It is this opinion that the patient did indeed suffer tears of the meniscus of both knees during her injury of _____.

Dr. G, an orthopedic surgeon who operated on the claimant's left knee, stated, in part, as follows, in a report dated January 12, 1999:

> Recently, she [the claimant] had an MRI done at the hospital for her right knee, which shows a complex tear of the medial meniscus and possible ACL injury. This is an acute event noted by the MRI findings. This is consistent with a subacute injury that is still symptomatic and in my opinion, part of the original injury.

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. So is the question of the extent of an injury. Appeal No. 93449. 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). In the present case, the hearing officer found an injury to the claimant's right knee and this was supported by both the claimant's testimony and medical records. The carrier argues strongly that the claimant's testimony at the CCH contradicted prior statements concerning the injury made by the claimant and that the doctors were merely relying on the claimant's history in determining causality. The carrier also points to the time elapsed between the original injury and mention of the claimant's right leg problems in the medical records. These matters were argued before the hearing officer and it was the province of the hearing officer to determine what weight to give to this evidence. We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant suffered a right knee injury.

The decision and order of the hearing officer are affirmed.

_____

Gary L. Kilgore
Appeals Judge

CONCUR:

_____

Susan M. Kelley
Appeals Judge

_____

Thomas A. Knapp
Appeals Judge