APPEAL NO. 991648

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 July 7, 1999. He (hearing officer) determined that the appellant (claimant) was not injured in the course and scope of her employment on (Injury 2), and that since she did not sustain a compensable injury, she did not have disability. The claimant appealed; urged that the great weight of the evidence supports a finding that she sustained a compensable injury on Injury 2, and had disability; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. In the alternative, the claimant requested that the Appeals Panel remand the matter for Dr. L to address whether the torn meniscus was caused by the Injury 2, accident. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant injured her left knee in injury 1 and had the kneecap removed. She worked with persons with disabilities in 1998. The claimant testified that on Tuesday, Injury 2, she was helping an obese person get into a van; that the person fell back; that she locked her legs in the process of keeping the person from falling further; that she heard a pop; that Ms. TT saw what happened; that Ms. T asked if she was okay; that she told Ms. TT that she would be okay; that she hurt a little bit; and that she finished the shift. The claimant said that Ms. AT was not present when the incident happened. She testified that she worked the next three days, that her knee was very swollen, that she hopped on her right leg, and that people asked if she was okay. She stated that on Saturday she went to visit her sister, that she was taken to an emergency room (ER), that she told the doctor what had happened, that her leg was placed in an immobilizer and she was given crutches, that she was told to see an orthopaedic specialist, that she did, that her leg constantly throbs, and that she has not been able to work. The claimant said that a benefit review officer ordered that she be seen by Dr. L, a neutral doctor, in January 1999; that she went to the doctor for the examination, but the carrier had not sent the doctor the medical records as it had been directed to do; that an MRI was performed on April 1999; and that Dr. L saw her on June 22, 1999.

Ms. TT was questioned by an adjuster. Ms. TT said that the claimant was putting a person in a van; that the person leaned back on the claimant; and that she, Ms. TT, heard some pops come from the claimant's body; that the claimant said that she was okay; and that the next day the claimant's leg was swollen and she was limping. The adjuster also questioned Ms. AT. She said that she began working for the employer on September 21, 1998; that on Injury 2, the claimant was limping before the time of the claimed incident; that she was with the claimant at the time of the claimed incident; that she, Ms. AT, assisted all

of the persons in getting into the van; and that the claimant did not assist any of the persons getting into the van.

The ER records state that the claimant's knee started hurting and swelling two or three days ago, indicate a 1989 injury, but do not mention a recent injury. In a letter dated September 28, 1998, Dr. M said that the claimant had a painful episode in her left knee, that she had a patellectomy in the past, and that there was no specific injury with the episode. In an Initial Medical Report (TWCC-61) issued after an October 19, 1998, visit, Dr. D said that the claimant reported that she injured her left knee while assisting a person who was falling from a van. In a report dated April 7, 1999, Dr. L requested an MRI. On June 22, 1999, Dr. L reported that the MRI revealed an 8mm subchondral cyst and a posterior central lateral meniscus tear and that he recommended a psychological evaluation.

In her appeal, the claimant states that she received Dr. L's report two days before the hearing and that there was no opportunity to obtain clarification from Dr. L regarding the cause of the meniscal tear. At the hearing, the claimant did not request a continuance to obtain clarification from Dr. L. Since there was not a motion for a continuance, the hearing officer did not make a ruling on such a motion and there is not a ruling that can be reviewed to determine whether the hearing officer abused his discretion. Under the circumstances of this case, we do not remand for further development of the evidence.

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). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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 issues, 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). The hearing officer's determination that the claimant was not injured in the course and scope of her employment on Injury 2, is 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, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Dorian E. Ramirez
Appeals Judge