APPEAL NO. 991661

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 13, 1999, a contested case hearing (CCH) was held. The issues disputed at the CCH were whether the respondent, who is the claimant, who sustained a compensable injury on _____, suffered a current knee problem for which that injury was a producing cause and whether he had disability as a result of such injury.

The hearing officer determined that the claimant's knee problems were sustained on _____, and that he had disability from the injury beginning on December 6, 1998, and continuing through the date of the CCH.

The appellant (carrier) has appealed and primarily argues that a claimant's testimony alone "does not rise to the necessary level to overcome that of reasonable medical probability." The carrier argues that the claimant had the burden to prove that the original diagnosis of knee strain was incorrect. The carrier points to the fact that the claimant did "not require" any medical treatment between the date of injury and February 8, 1999. The carrier finally argues that claimant demonstrated the capability to obtain and retain employment equivalent to his preinjury average weekly wage. The claimant responds that there is no sound basis to disturb the findings of fact made by the hearing officer from his weighing and evaluation of the evidence.

DECISION

We affirm.

The claimant, in his mid-20s, was employed by (employer). He was assigned on September 1, 1998, to work at a computer assembly company. Claimant said he worked 12-hour shifts and much of that time was spent standing on the line.

Near the end of his shift in the early morning hours of _____, the claimant said he was transferring computers when he twisted his right knee. He said he felt a popping sensation. This was undisputed by the carrier. He promptly reported his injury and was sent by the employer to a clinic where he saw Dr. M and was diagnosed with a knee strain. Physical therapy was prescribed, but claimant said he missed his first appointment when there was a miscommunication about the therapy clinic location, and thereafter there were problems scheduling it, so he never took therapy. He continued to work but quit on October 26, 1998, when he became unable to stand on his feet throughout the shift.

Claimant was ultimately diagnosed with a torn lateral meniscus and a torn anterior cruciate ligament (ACL) when he had an MRI on February 18, 1999. He was scheduled for surgery, pursuant to the carrier's preauthorization, later in the month in which the CCH was held.

The claimant then said he started working as a bartender on November 4, 1998, for a restaurant, which did not entail as much work on his feet, but he nevertheless quit in increasing pain on December 4, 1998. The claimant said he had applied for and been offered a construction job in December, but refrained from taking it due to his knee.

It was not disputed that the claimant sought medical treatment in February 1999 for his knee once more. There was conflicting evidence concerning why this occurred. The owner of the employer, Ms. B, said that claimant contacted her and said he hurt his knee again while going up some stairs. However, she also stated that he told her this related to an _____, injury (of which she had not previously known) and that she thereafter contacted the branch of the company to whom the accident was reported for more information. The adjuster stated that claimant told her he was going up some stairs at a library in February and felt a "pop" and immediate pain. The claimant stated only that he had tried to describe to these people the fact that certain activities were causing increasing pain, and that there had been no incident injuring his right knee after _____.

Claimant's doctor, Dr. C, who was a medical doctor and general practitioner, testified that the MRI was the definitive test for torn ligaments and noticed that one had not been done by Dr. M. Dr. C said that the popping sensation that claimant described on _____, was characteristic of an ACL tear and that even if there had been a subsequent incident, it would not necessarily change his opinion that internal derangement of claimant's knee occurred from the lifting and twisting he described on _____. Dr. C had treated claimant beginning in April 1999. He said that a torn ACL would not just develop from a strained knee. Prior to that, claimant was seen by Dr. V, who recorded a history of numerous popping sensations after the initial injury. Claimant said he did not seek medical treatment for many months because he did not want to pay for it.

Dr. M completed a "chart review" on May 21, 1999, in which he stated that there was no history of popping, clicking, or instability in claimant's knee when he examined him. Dr. M noted that he did not keep his recheck appointment or therapy appointments.

A claimant's testimony alone, when believed, may establish that an injury has occurred and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.- Houston [1st Dist.] 1987, no writ). The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). 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 of 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.). 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). It is clear that the hearing officer in this case chose to believe the claimant's recitation of what occurred, and that there was no subsequent, intervening event. We cannot agree that this evaluation is so against the great weight and preponderance of the evidence as to compel a reversal.

We affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Alan C. Ernst
Appeals Judge