

APPEAL NO. 991784

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 1, 1999. The appellant (claimant) and the respondent (carrier) stipulated that on _____, the claimant sustained a compensable injury to his left shoulder, lumbar spine, thoracic spine, ribs, and right knee. The claimant contended that his compensable injury extends to or includes his left knee. The hearing officer determined that it does not. The claimant appealed, contended that this determination is so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust and requested that the Appeals Panel reverse the decision of the hearing officer, and render a decision that his compensable injury includes an injury to his left knee. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified that he fell backwards off a ladder, hit a brick wall, landed on the ground, and was taken to the emergency room (ER) in an ambulance. He said that in the ER he told the people where he was hurting, including his legs; that x-rays were taken; that x-rays of his legs were not taken; that the doctor did not examine his left knee; and that he stayed in the hospital for five days. The claimant stated that about a week after he fell, a person came to his house to question him; that he told her what was hurting; that he showed her a bruise behind his left knee; that he does not know why the left knee is not in the transcript of the interview; that he asked her to take a picture of his injuries; and that she did not do so. He testified that if he carries something, climbs, or strains himself his left knee hurts. The claimant's wife testified that she was present when he was interviewed, that the claimant told the woman that both knees were bruised, that the person saw the bruises on both knees, and that the claimant asked the woman to take a picture of his knee.

An emergency medical services report dated _____, mentions several areas, including the right knee, but does not mention the left knee. Reports of a CT of the claimant's abdomen and x-rays of the claimant's chest, cervical spine, and left shoulder from the hospital are in the record; but other reports from the hospital are not. In a Report of Medical Evaluation (TWCC-69) dated December 8, 1998, the claimant's first treating doctor certified that the claimant reached maximum medical improvement on December 7, 1998, with a zero percent impairment rating. The record does not include a narrative attached to the TWCC-69. The claimant changed treating doctors to Dr. C, a chiropractor. Dr. C first saw the claimant on December 21, 1998; recorded what the claimant told him about the injury, including that the knees were injured; reported on his examination of the claimant; proposed a treatment plan; and took the claimant off work. Reports of treatment indicate that the left knee was treated.

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 a claim, 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 because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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). The hearing officer is not bound by the testimony of a medical witness when the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Texas Workers' Compensation Commission Appeal No. 952044, decided January 10, 1996. An appeals level body is not a fact finder and it 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). In the statement of the evidence in her Decision and Order, the hearing officer stated that the preponderance of the credible evidence was not in the claimant's favor. The hearing officer's determination that the claimant's compensable injury sustained on _____, did not include or extend to his left knee and the appealed findings of fact on which that determination is partially based are 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, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Elaine M. Chaney
Appeals Judge