APPEAL NO. 992037

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On August 3, 1999, a contested case hearing (CCH) was held. With respect to the issues before her, the hearing officer determined that on _____, the respondent (claimant) suffered a compensable injury to both knees but did not sustain a compensable injury to his neck or low back. The hearing officer also concluded that the claimant had disability from July 9, 1998, continuing through the date of the CCH. The appellant (carrier) files a request for review, essentially arguing that the hearing officer's decision was contrary to the evidence in regard to finding a compensable injury and disability. The carrier essentially argues that the claimant filed a groundless claim because of personnel problems. There is no response from the claimant 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 claimant testified that he was injured on _____, when he slipped and fell at work. The claimant testified that he injured both his knees as well as his back and neck. Mr. J, a coworker, testified that he witnessed the claimant's accident, although his recollection of the incident differed in some details from the claimant's. Much of the medical evidence the claimant sought to introduce was excluded on the grounds that it had not been timely exchanged. There was in evidence a report from Dr. F, a medical examination order doctor selected by the Texas Workers' Compensation Commission, who opined that the claimant injured his left knee at work, but did not believe that the claimant injured his right knee, back or neck. The carrier put into evidence personnel records from the employer showing the claimant was discharged for excessive absenteeism. The carrier argued that even though the termination took place after the claimant's compensable injury, the claimant knew he was going to be terminated prior to the injury. The claimant denied this.

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. This is also true of the question of the extent of an injury. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the 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). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case, the hearing officer found an injury and this finding is supported by the testimony of the claimant, Mr. J and Dr. F. We cannot say that the hearing officer was incorrect as a matter of law in making this finding. The carrier argues that the hearing officer ignored inconsistencies between the testimony of the claimant and Mr. J. This simply goes to the credibility of the witnesses and the weight to give their testimony, which was the province of the hearing officer. We decline to reweigh the evidence. The carrier also argues that Dr. F's report did not support a right knee injury. While Dr. F only finds an injury to the claimant's right knee, the hearing officer could rely on Dr. F's opinion as to the left knee without necessarily relying on his testimony as to the right knee. The claimant's testimony alone was sufficient to support an injury to the right knee. Finally, the carrier argues that the hearing officer did not discuss evidence that did not support her decision. The hearing officer is not required to discuss evidence. Texas Workers' Compensation Commission Appeal No. 92206, decided July 6, 1992. In any case, she specifically stated in her decision that even though all the evidence was not discussed, she considered all of the evidence. We will not presume otherwise. *See* Texas Workers' Compensation Commission Appeal No. 960262, decided March 25, 1996.

The carrier argues that the hearing officer's finding of disability is not supported by medical evidence. Disability is a question of fact to be determined by the hearing officer and may be based on the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge