APPEAL NO. 000348

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 January 27, 2000. The hearing officer determined that the respondent (claimant) injured her left knee in the course and scope of her employment on _____, and that she had disability from October 14, 1999, through December 3, 1999. The appellant (carrier) appealed, summarized evidence favorable to its position, urged that the great weight of the evidence is contrary to the decision of the hearing officer, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not sustain a compensable injury and did not have disability. The appeal file does not contain a response from the claimant.

DECISION

We affirm.

The claimant contended that she injured her left knee on _____, when she fell and hit her knee on the floor at work. The carrier contended that the claimant did not injure her knee at work; that the condition of her knee is the result of an ordinary disease of life; that she did not sustain a compensable injury; and that since she did not sustain a compensable injury, she did not have disability. The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, the claimant testified that she fell at work on _____; that she did not think it was serious, laughed about it, and kept working; that her daughter and Ms. T, a coworker and friend, saw her on the floor; that later she limped and her daughter convinced her to go to a doctor on October 5, 1999; that she went to another doctor on October 13, 1999; and that she was in pain on that day, but she did bowl that day because of a commitment to the team. The testimony of the claimant's daughter and Ms. T are generally consistent with that of the claimant; however, there are inconsistencies such as the time of the incident on _____. Mr. G, the claimant's supervisor, testified that, on a date that he did not recall, the claimant told him that her knee hurt; that she thought that it might be arthritis; and that she did not tell him that it happened at work. The claimant testified that she told Mr. G that she fell, that they joked about old age, and that she told him that it could have happened at work. She also testified that she was taken off work and requested that she be released to return to work because she needed the money.

A medical report from Dr. M dated October 5, 1999, states that the claimant is a poor historian, that she had difficulty explaining what was wrong with her, that x-rays do not show much degenerative change and show a slightly lateral riding left patella, and that he thought that her main problem is patellofemoral and that it is possible she might have suffered a small cartilage tear. A report of an MRI of the left knee states that diagnostic possibilities are spontaneous osteonecrosis and bone bruise. In a letter dated November 1, 1999, Dr. B said that he understood that the claimant's claim was being disputed as a preexisting condition with osteoarthritis, that the claimant had no symptoms in her knee until the day of the injury, that the claimant responded to a cortisone injection, and that within all medical probability she has a work-related knee injury. In a letter dated

November 15, 1999, Dr. Me stated that he reviewed the medical records and that in his opinion the claimant sustained a spontaneous osteonecrosis of the left femoral condyle that is not work related.

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). 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). In the statement of the evidence in her Decision and Order, the hearing officer stated that there were inconsistencies in the evidence, that the claimant appeared to be credible, and that she met her burden of proof. 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. 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). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge