APPEAL NO. 000477

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 February 1, 2000. The issues at the CCH were whether the appellant (claimant herein) sustained a compensable injury on _____; and whether the claimant had disability. The hearing officer determined that the claimant failed to meet his burden of proof to demonstrate that he sustained the compensable injury alleged on _____, and that claimant's subsequent inability to work does not constitute disability. The claimant appeals, requesting that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier herein) replies to the claimant's request for review, urging we affirm the decision of the hearing officer.

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 while working as a maintenance man at an apartment complex on _____, he was descending a flight of stairs, carrying two five-gallon buckets of paint when he felt his left knee pop. The claimant testified that as he continued to work he felt his knee continue to pop and it later locked up and started to swell. The claimant testified that he reported his injury to the manager of the apartment complex who advised him to seek medical treatment. The claimant sought medical treatment the following day. The claimant testified that he was released to light duty and continued to work at his regular duties until July 22, 1999, when he was unable to work due to his left knee problems.

A medical report dated July 8, 1999, states: "(L) knee pain after climbing stairs with 5 gallon paint buckets + climbing ladders." An MRI performed on July 16, 1999, indicated lateral meniscus tear in the claimant's left knee.

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. Section 410.165(a) provides that the contested case 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 no injury contrary to the testimony of the claimant which had some support in the medical evidence. Claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might draw other inferences and reach other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The claimant argues that the hearing officer is being "hypertechnical" and unfairly misconstrues the evidence when she states that the claimant's description of his injury at the CCH is inconsistent with the description of injury in medical reports in reaching her decision that the claimant failed to establish a compensable injury. The claimant contends that the claimant's description of the injury, while not verbatim, is not inconsistent in that at different times he is describing what occurred at different times during the course of his injury and the onset of his symptoms. The carrier in its response characterizes the claimant's history of his alleged injury as "wildly inconsistent." We understand that there are some discrepancies between the claimant's description of his injury at the CCH and the history found in the medical records. The claimant provided an explanation for these discrepancies in his testimony. As the fact finder, the hearing officer could have accepted this explanation, but chose not to do so. We will not substitute our judgment for hers in regard to the credibility of testimony. We are troubled by the fact that in spite of uncontradicted testimony of an injury on _____; an undisputed report of an injury on the same day; and objective medical evidence of an injury on the following day, the hearing officer found no injury. However, we have also on numerous occasions held that the Appeals Panel should not set aside the decision of a hearing officer because the hearing officer may have drawn inferences and conclusions different than those the Appeals Panel deems most reasonable, even though the record contains evidence of inconsistent inferences. Garza, *supra*; Texas Workers' Compensation Commission Appeal No. 93334, decided June 14, 1993; Texas Workers' Compensation Commission Appeal No. 93053,

decided March 1, 1993; Texas Workers' Compensation Commission Appeal No. 92539, decided November 25, 1992.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. *See* Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge