APPEAL NO. 000533

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 15, 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 did not sustain a compensable injury and, therefore, did not have disability. The claimant appeals, requesting that we reverse the hearing officer=s decision and render a decision in her favor. The respondent (self-insured herein) responds, urging affirmance.

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 she worked for the self-insured repairing and collecting coins from parking meters. The claimant testified that this required her to push and pull carts of coins weighing from 100 to 200 pounds up and down hills. The claimant stated she felt pain in her right knee on _____. The claimant underwent surgery on her right knee on December 3, 1999. The claimant testified she had some disability from December 19, 1999, through January 3, 2000.

Dr. C, M.D., the claimant's treating doctor who performed the surgery on the claimant=s right knee stated as follows in a letter of November 29, 1999:

> I feel that due to the repetitive nature of her job (extensive walking up and down steep hills, carrying up to 200 pounds in coins), she developed her symptoms. Note also she has had no prior symptoms or history.
>
> I believe that her condition is definitely work-related and she should be allowed full benefits.

After the claimant's surgery, Dr. C stated as follows in a progress note dated December 15, 1999:

> It appears postoperatively that the patellar lesion was related to the on-the-job injury, but it is hard to draw a connection between the lateral and medial condylar chondral injuries, which would be more chronically related to an early degenerative process. There is a chance that some of the lateral and medial, as well as most of the patellar chondral injury, is related to repetitive traumatic injury from her on-the-job requirements. This would not be a complete correlation but a partial and aggravating factor, including exacerbation of a

more minor chrondral injury. I can say that with good reasonable medical certainty.

Dr. Co, D.O., performed a review of the claimant's records for the self-insured and stated as follows in a letter of November 9, 1999:

> I really do not see any relationship between her work activities and the described symptoms. On the day in question, there was no particular injury. The single act of pushing a cart would not have resulted in chondromalacia patella or patellofemoral disease. There did not appear to be anything unusual about the activities of that day, nor was there any one specific injury. As a result, I see no evidence that she actually sustained an injury to her body in the scope of her employment.

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 was supported by medical evidence. There was contrary medical evidence. The claimant had the burden to prove she was injured in the course and scope of her 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 have drawn other inferences and

reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

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:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge