APPEAL NO. 000579

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 992822, decided January 31, 2000. We remanded the case to insure that the hearing officer apply the correct legal standard by making findings concerning sole cause and to indicate what medical evidence support his findings. On remand, the hearing officer issued a new decision in which he concluded that the appellant (claimant) had disability from March 25 to March 28, 1999. The hearing officer found that the claimant's later inability to work was due to claudication which was caused by his diabetes and which was not related or causally connected to his compensable injury. The claimant appeals, contending that the hearing officer erred as a matter of law in so doing. The claimant contends that the hearing officer did not follow the instructions on remand to make findings on sole cause and that the medical evidence would not have supported such findings. The claimant further complains that the hearing officer did not even discuss the opinion of the doctor who examined the claimant at the agreement of the parties. The respondent (carrier) replies that the decision is supported by the evidence and that the hearing officer followed the instructions of the Appeals Panel on remand.

DECISION

Finding minimally sufficient evidence to support the decision of the hearing officer, we affirm the decision and order of the hearing officer.

No additional evidence was taken on remand. Thus, the following summary of the evidence found in our decision in Appeal No. 992822, *supra*, accurately summarizes the evidence:

> The parties stipulated that on _____, the claimant sustained a compensable injury to his right leg, right knee, and right ankle. The claimant described this injury as taking place when he was pulling a cart of aircraft parts that a coworker was pushing. The claimant testified that he lost his balance and the handle of the cart hit him in the right knee, calf, and ankle and drove him to the cement floor. The claimant was initially placed on an off-work status for three days and returned to work with restrictions. The claimant testified he returned to light-duty work but had problems performing this work. The claimant and a coworker both testified that the claimant was told by a supervisor to not return to work until he was able to work at full duty. The claimant testified that he did not work after May 16, 1999. Dr. B testified that he began treating the claimant in June 1999, placed the claimant off work and has been of the opinion that the claimant has been unable to work since that time. Dr. B's medical records indicate he first saw the claimant on June 14, 1999, and placed the claimant on an off-work status at that time.

The claimant testified that prior to working for the employer he suffered from diabetes. The claimant testified that he reported this at the time he underwent his preemployment physical. In May 1999, tests showed that the claimant had reduced blood flow in his right leg. The parties agreed to a required medical examination by Dr. D. In an August 19, 1999, report Dr. D discussed the causality of the claimant's condition as follows:

> Most or major part of his problems are related to diabetes and due to the arterial insufficiency as I mentioned before. As I said, there is a contribution by the injury for his symptoms and pain of the knee and the ankle and also the soft tissue injuries. If you ask me to say how much percentage is from the "pre existing" condition and how much is related to the injury, I will not be able to answer the questions.

The hearing officer's decision on remand includes the following findings of fact and conclusions of law:

FINDINGS OF FACT

7. Medical authorities determined in May 1999, after the Claimant's symptoms from his compensable injury had ended, that the Claimant was suffering from claudication in his right leg, which is a neural and arterial condition stemming from an insufficiency of blood flowing into the leg.

8. The claudication was caused by the Claimant's diabetes, which he had endured for approximately 14 years. His right leg symptoms that he suffered from about May 17, 1999 and thereafter were caused by the claudication, and were not related or causally connected to his compensable injury.

CONCLUSION OF LAW

2. As a result of his compensable injury, the Claimant had disability from March 25 through March 28, 1999.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 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). 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.). 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; and Texas Workers' Compensation Commission Appeal No. 92539, decided November 25, 1992.

Applying the standard of review stated above, we affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge