APPEAL NO. 000653

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 6, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable left knee injury on or about _____, and that she had disability as a result of her compensable injury from October 27, 1999, through the date of the hearing. In its appeal, the appellant (carrier) asserts that those determinations are against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that she began working for the employer in July 1999 and that her duties included picking up and delivering laundry and dry cleaning for commercial and residential customers. She stated that on or about _____, she was carrying a large box of cleaning up the stairs at an apartment complex, when she developed a "burning sensation" and pain in her left knee. The claimant testified that she reported her injury to her supervisor, Ms. C, on the day that it happened and that she continued to work until about October 22nd, when she could not work anymore because of the pain and swelling in her left knee. The claimant stated that the condition of her knee deteriorated as she continued to work, climbing stairs, walking and getting in and out of the van. She denied that she had ever had a previous knee injury. In a recorded statement she gave to an adjuster with the carrier, the claimant stated that her knee injury "just progressed. It started to hurt and just got worse. I did not trip or fall or anything like that."

The claimant testified that she initially sought medical treatment at the county hospital because the carrier denied her claim. Thereafter, she began treating with Dr. Y, a chiropractor. In his initial report dated November 5, 1999, Dr. Y noted a history of the claimant's having developed immediate knee pain and swelling while carrying a load of clothes up a flight of stairs and that her pain progressed as she continued to work. Dr Y took the claimant off work at the November 5th appointment and referred the claimant for a left knee MRI, which revealed an anterior cruciate ligament tear. Dr. Y started the claimant on physical therapy; however, Dr. Y referred her to Dr. B, an orthopedic surgeon, when she did not respond to physical therapy. In a November 16, 1999, report, Dr. B noted that the claimant had hurt her left knee "while performing repetitive climbing of stairs and walking and carrying of dry cleaning material." Dr. B confirmed a partial anterior cruciate ligament tear and stated that surgery might not be necessary, but that he would reserve judgment until reexamination. The claimant testified that she has subsequently been advised that surgical repair will be required.

Ms. C testified that she first learned that the claimant was alleging a work-related knee injury on October 27, 1999. She stated that the claimant had complained of knee pain prior to

that date but she did not state that she had injured her knee at work. Ms. C testified that the claimant told her that her knee pain started gradually and that she did not tell her about the incident of developing pain and swelling while carrying a box of cleaning up the stairs at an apartment complex.

The carrier introduced a peer review report from Dr. S, an orthopedic surgeon. Dr. S noted that the claimant had a large effusion and tear of the anterior cruciate ligament and that they were "indicative of a traumatic event." However, Dr. S further opined that "[s]ince the claimant did not recall any specific traumatic event during her initial recorded statement and during her benefit review conference, it would not appear medically reasonable that the trauma documented on the MRI could have occurred during her regular duty occupation."

The carrier attached a document to its appeal, which it did not introduce at the hearing, which purports to address the claimant's work activities on _____. The carrier asserts that it was not given a fair opportunity to defend that claim because the claimant changed the date of injury from October 22, 1999, to on or about _____, at the beginning of the hearing. We find no merit in this assertion. The carrier did not object to changing the date of injury at the hearing. To the contrary, it consented to the modification. (Transcript p. 10.) As such, it did not preserve any potential error related to that change for purposes of appeal.

The carrier contends that the hearing officer's determination that the claimant sustained a compensable injury is against the great weight of the evidence. The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass=n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In arguing that the claimant had not sustained her burden of proving that she sustained a compensable injury, the carrier emphasized the same factors that it emphasizes on appeal at the hearing. It was a matter for the hearing officer, as the fact finder, to determine the significance, or lack thereof, of those factors. The hearing officer was acting within her province as the fact finder in deciding to credit the claimant=s testimony and the causation evidence from Dr. Y and Dr. B over the contrary opinion from Dr. S. The carrier asserts that

the hearing officer erred in giving weight to Dr. B's opinion because it was "based upon an improper premise and amount[ed] to no evidence of causation." The variance, if any, between Dr. B's understanding of the mechanism of injury and the actual mechanism of injury, was a matter for the hearing officer to consider in assessing the weight and credibility to be assigned to the opinion. We find no merit in the assertion that Dr. B's causation opinion was premised upon such a complete misunderstanding as to make it of no probative value. Our review of the record does not reveal that the hearing officer=s determination that the claimant sustained a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The success of the carrier's argument that the claimant did not have disability is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the hearing officer's determination that the claimant had disability as a result of her compensable injury from October 27, 1999, through the date of the hearing.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge