APPEAL NO. 000686

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 February 29, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the claimant timely reported her alleged injury to her employer; that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy; and that the claimant did not have disability. In her appeal, the claimant argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. The claimant also asserts that the hearing officer applied an incorrect standard in evaluating the medical evidence of causation from the claimant's treating doctor. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determinations that the claimant timely reported her alleged injury to the employer and that she did not make an election of remedies.

DECISION

Affirmed.

The claimant, who is a 30-year employee at (employer), testified that in 1998 she began to work in a quality control position during the third shift. She stated that on March 15, 1999, she woke up at home and had severe pain in her right knee to the point that she was not able to walk. The claimant testified that she had to drag her right leg in order to get around. The claimant contends that her right knee condition was aggravated by the fact that she was required to perform her job duties while cold air coming through perforated tiles in the floor constantly blew on her legs. The claimant's work in quality assurance was done in one of the employer's labs, which had a raised tile floor. Some of the tiles were perforated to permit cool air to come through and keep the machines cooled. The claimant stated that she continued to work until March 29, 1999, when she decided to seek medical treatment for her condition, which had continued to worsen as she continued to work with the air blowing on her leg. The claimant sought treatment from Dr. S, an orthopedic surgeon. On April 7, 1999, Dr. S ordered an MRI of the claimant's right knee, which revealed osteoarthritis, chondromalacia patellae, a horizontal tear of the posterior horn of the medial meniscus, knee joint effusion, and a Grade I or II tear of the medial collateral ligament. In a "To Whom it May Concern" letter dated August 31, 1999, Dr. S stated:

> It is my strong opinion that the patient's present right knee complaints are directly causally related to her work activities. She stated that she has been standing and walking on her job on concrete floors for 33 years. She states that she struck her right knee but [sic] not sure of the exact date. Patient feels that the prolonged standing and walking has aggravated the right knee problem.

> The combination of excessive walking and standing, coupled with the air conditioning blowing on her knee, quite definitely aggravated her right knee injury.

The claimant argues that the hearing officer's determination that she did not sustain a compensable injury is against the great weight of the evidence. The claimant had the burden to prove injury by a preponderance of the evidence. 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 him. 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 this instance, a review of the hearing officer's decision demonstrates that he simply was not persuaded by the evidence presented by the claimant that "the claimant's serious joint disease/condition was caused, by any degree, by the cold air blowing on the claimant's legs while she worked." The hearing officer was acting within his province as the fact finder in deciding to reject the causation opinion of Dr. S and the other evidence tending to support the claimant's contention that her right knee injury was work related. Our review of the record does not reveal that the hearing officer=s determination that the claimant did not sustain a compensable occupational disease 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).

In her appeal, the claimant argues that the hearing officer applied an incorrect legal standard in evaluating the causation opinion of Dr. S. In his discussion, the hearing officer noted that Dr. S's causation opinion was "conclusory." The claimant argues that the "implication" of that statement is that the hearing officer erroneously "believes that the report of a medical expert must fully explain the etiology of a condition in a cause and effect medical narrative." We find no merit in the assertion that the hearing officer used an improper standard to evaluate the medical evidence from Dr. S. To the contrary, we believe that the hearing officer's commentary on Dr. S's opinion is nothing more than an explanation of why he, as the fact finder and the sole judge of the weight and credibility of the evidence, decided to discount that opinion. We perceive no error.

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. *See* Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge