APPEAL NO. 000760

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 11, 2000. The hearing officer determined that the appellant (claimant) is not relieved of the effects of the benefit dispute agreement dated September 17, 1999. The claimant appealed, stated evidence favorable to his position, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

A benefit dispute agreement dated September 17, 1999, states that the claimant reached maximum medical improvement on January 15, 1996, pursuant to Dr. L; that the claimant=s impairment rating (IR) is 15% pursuant to the designated doctor, Dr. M; and that, pursuant to CCH decisions, the claimant=s right knee is part of the compensable injury.

The claimant testified that he was born in Ethiopia in 1949, that he did not speak or read English before he came to the United States in 1983, and that he now speaks and writes a little English. He said that at a benefit review conference (BRC) conducted on September 17, 1999, he signed an agreement; that neither the ombudsman nor the benefit review officer (BRO) explained the agreement to him; that he thought that the agreement was that the 15% IR was for injuries that had been previously accepted; and that he would receive additional IR for the injury that was accepted in the agreement. The carrier attempted to call the ombudsman and the BRO as witnesses, but the hearing officer did not permit them to testify. The person or persons who explained or did not explain the agreement would have been the best person(s) to testify as to what transpired when this agreement was made. An attorney, who represented the carrier at the September 1999 BRC, testified that he stepped out of the BRC to speak with an adjuster; that he attended many BRCs; and that he did not recall the specifics of that particular BRC. He said that, as a general rule, BROs and ombudsman explain agreements to claimants before they are signed and that his experience has been that the BRO at that BRC is especially good at explaining the significance of agreements. He said that he attended four or five BRCs and two CCHs involving the claimant; that based on those proceedings, it is his opinion that the claimant is able to read English and to understand what is said to him in English; and that the BRCs were lengthy because the claimant wanted to understand everything before he made a decision.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness=s testimony because the finder of fact judges the credibility of each and every witness, the weight to assign

to each witness=s testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref=d n.r.e.); Texas Workers= Compensation Commission Appeal No. 93426, decided July 5, 1993. An appeals level body is not a fact finder, and it 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). The finding of fact made by the hearing officer is more in the nature of a conclusion of law. It would have been preferable for him to have made additional findings of fact. However, in the statement of the evidence and discussion in his Decision and Order, he stated that the claimant was not credible when he testified that the agreement was not explained to him or that he did not understand the agreement at the time. The determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King=s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge