APPEAL NO. 000809

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 March 23, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the course and scope of his employment on _____ (all dates are 1998 unless otherwise noted); and that the claimant did not have disability. The claimant appealed, reurging her testimony and evidence in her favor. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Claimant had been employed as (sales person) at (employer) for about one month. Claimant testified that _____ was a rainy day, that she entered the showroom, walked some distance when she slipped, causing her to brace her leg and injure her right knee. Claimant says that she did not fall. Claimant testified there was "a crowd of people around" but no witnesses were presented that saw the slip. Claimant testified that later in the day her knee began to swell and she had muscle spasms. Claimant testified that the next day, _____, she took some time off to see a therapist. It is disputed whether or what claimant may have told her supervisor, RW on either _____ or _____. Claimant continued working until November 20th, when she resigned. Her resignation form stated:

> I injured my knee on the showroom floor & pulled muscles. I have a lot of pain & its very stressful to walk for long period. I need to take care of My Health Problem.

RW and JM, employer's general manager, both testified that the first notice they had of a work-related injury was when claimant resigned on November 20th. Notice to the employer pursuant to Section 409.021 is not an issue. Carrier contends that claimant did not sustain a work-related injury on _____. WM, a coworker, testified that he noticed claimant limping and asked her what was wrong and that claimant told him that she injured her knee at a family function. No date was identified for this conversation. Claimant testified at the CCH, and asserts on appeal, both that she had had no prior right knee injuries and that her leg or knee had swollen during riding in a truck during the Labor Day weekend, two months prior to _____.

In a note dated April 16, 1999, a muscle therapist wrote that claimant had "presented in our office with right leg and knee pain" on _____ and that claimant "received massage to the calf area and also the entire leg." Claimant first saw a doctor on November 25th, when she sought care from Dr. K. In a report dated November 25th and various progress notes thereafter, Dr. K recites the history of the November 9th slip incident, took

claimant off work, diagnosed a contusion and prescribed anti-inflammatory medication. Claimant was subsequently seen by Dr. S, an orthopedic surgeon, who, in a report dated June 28, 1999, recited a history of "a slip and fall" and ordered an MRI, which was performed on July 21, 1999. In a report dated August 10, 1999, Dr. S said the MRI "demonstrated a tear through the posterior horn of the medial meniscus." Dr. S opined that claimant would need arthroscopic knee surgery.

Regarding disability, claimant testified that she was unable to work after November 20th, that Dr. K took her off work and that she returned to work for another employer on May 25, 1999. Claimant argued that she had been self-employed in March 1999 selling lingerie but that she only earned about $500.00.

The hearing officer found that WM was a credible witness and established that claimant sustained her right knee injury at a family function. Claimant, in her appeal, stresses her testimony, denies that she told WM that she injured her knee at a family function but that she had hurt her leg on Labor Day weekend.

The evidence is in conflict and hinges on whom one chooses to believe. 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 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

In that we are affirming the hearing officer's decision that claimant had not sustained a compensable injury, claimant cannot by definition in Section 401.011(16) have disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are 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). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Dorian E. Ramirez
Appeals Judge