APPEAL NO. 000828

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 3 and March 31, 2000, with (hearing officer 1). At a prior CCH held on October 15, 1999, another hearing officer determined that on _____, the respondent (claimant) sustained a compensable injury to his right knee and right elbow and had disability from June 9, 1999, through June 25, 1999. Hearing officer 1 determined that the claimant had disability beginning on October 16, 1999, and continuing through the date of the CCH. The appellant (carrier) requested review, urged that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence that includes quotations from the prior Decision and Order and from medical reports dated after the prior CCH. It indicates that hearing officer 1 considered all of the evidence. An MRI of the right knee was performed on June 22, 1999. Dr. M, a board certified radiologist, reported that the MRI showed a radial tear through the posterior horn of the medial meniscus with the tear extending to the inferior articular surface. In a report dated October 22, 1999, Dr. JL, an orthopedic surgeon, reported that the claimant had a tear of the posterior horn of the medial meniscus; that he felt that the tear was a result of the _____, injury; that he had recommended surgery; and that the claimant still needs to have the surgery. On October 22, 1999, Dr. R, a chiropractor and the claimant's treating doctor, reported that the claimant was referred for an orthopedic consultation; that the result was a diagnosis of a posterior horn tear of the medial meniscus; that he will require right knee surgery which will be scheduled as soon as possible; and that he is to remain off work until further notice. Dr. DL, the designated doctor, examined the claimant on February 29, 2000, and reported that the claimant's knee had not reached maximum medical improvement because the necessary orthoscopic repair of the tear in the medial meniscus in the right knee had not been performed.

The carrier disputed the need for right knee surgery and it had not been performed by the date of the CCH. At the request of the carrier, the claimant was examined by Dr. K, an orthopedic surgeon. In a letter dated December 22, 1999, Dr. K reported that he reviewed the MRI of the knee and that he saw absolutely no abnormality of the medial meniscus except for a Grade II internal signal change of the posterior horn and no evidence of a full thickness tear or effusion and recommended a second opinion. Dr. K also wrote

that he had reviewed a videotape of the claimant and saw no reason why the claimant could not return to work without restrictions.

The claimant testified that he could not perform the construction work he did when he was injured. He said that he started working as a security guard on January 12, 2000, and continued to do that work until February 23, 2000. He stated that his pay as a security guard was less than his pay at the job in which he was injured. He said that he stopped working as a security guard because work locations were changed, that at the second location he was required to go up and down stairs and he could not do that, and that he also stopped working because of some difficulty with his license. At the CCH, the parties agreed that only certain parts of a videotape needed to be reviewed. The person who took the videotape testified about it. In the statement of the evidence, the hearing officer accurately describes activities depicted in the videotape.

A determination concerning disability cannot extend beyond the date evidence is closed at a CCH. Texas Workers' Compensation Commission Appeal No. 950381, decided April 25, 1995. An injured worker may go in and out of periods of disability. Texas Workers' Compensation Commission Appeal No. 960139, decided March 1, 1996. The burden is on the claimant to prove that he had disability for a specific period. Texas Workers' Compensation Commission Appeal No. 931036, decided December 23, 1993.

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. 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. 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). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. 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 could 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). Only were we to conclude, which we do not in this case, that the hearing officer's determination that the claimant had disability beginning on October 16, 1999, and continuing through the date of the CCH is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb that determination. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer, we will not substitute our judgment for

his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

Philip F. O'Neill
Appeals Judge