APPEAL NO. 000831

A contested case hearing (CCH) was originally held on December 7, 1999, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 000094, decided March 1, 2000, the Appeals Panel reversed the decision of the hearing officer and remanded for the hearing officer to conduct another CCH, give the appellant (claimant) the opportunity to testify about a deposition that was admitted into evidence after the parties had made closing statements, and assure that both parties are provided due process. The hearing officer held another hearing on March 29, 2000, and rendered another decision on March 31, 2000, in which she again determined that the claimant's compensable injury sustained on _____, does not extend to or include his left knee and that he did not have disability. The claimant appealed those determinations, stated why he thought those determinations were wrong, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that his compensable injury extends to and includes his left knee and that he had disability. The respondent (carrier) replied, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm.

Appeal No. 000094, *supra*, contains a summary of the evidence received at the CCH held on December 7, 1999. During the taking of the deposition, the claimant was asked "[d]id you know [Dr. F] before you went to see him on November 8th, 1994? Had you met him before?" The claimant responded:

> I met him once before. I had a problem with my knee, and I had him look at it. I got my knee hit and did something to my knee and had him look at my knee.

At the hearing on remand, the claimant testified that in 1988 or 1989 when he was playing football in junior high school, he pulled a groin muscle; that a sports clinic and Dr. F, a chiropractor, checked him and determined that he had a groin injury and not a knee injury; and that he did not mention the groin injury in the deposition because they did not get into detail. In the discussion section of her Decision and Order, the hearing officer stated that the claimant's testimony at the CCH that he had no prior left knee injuries was directly contradicted by his testimony in the deposition, that the claimant's explanation concerning the inconsistencies did not appear to be plausible or logical, and that it appeared the claimant's compensable injury sustained on _____, was limited to a burn injury and did not extend to or include an injury to the left knee.

The burden is on the claimant to prove by a preponderance of the evidence the extent of an injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. 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). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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 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 hearing officer's determination that the claimant's compensable injury does not extend to or include the claimant's left knee is 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).

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). We have found the evidence to be sufficient to support the determination that the claimant's injury does not extend to or include an injury to the claimant's left knee. The claimant testified that he was released to return to work at light duty on April 13, 1999; worked light duty just sitting in a chair for a while; did not want anything to do with that type of work anymore; and quit working for the employer when he received a full-duty release. Our affirming the determination that the claimant's compensable injury does not extend to or include his left knee and his testimony related to working for the employer are sufficient to support the determination that he did not have disability. The determination that the claimant did not have disability is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is affirmed. King, *supra*; Pool, *supra.*

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge