APPEAL NO. 000955

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 April 5, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease on _____; that she timely reported her alleged injury to her employer; and that she 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. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant timely reported her alleged injury to her employer.

DECISION

Affirmed.

The claimant testified that she is a line supervisor for the employer and that the lines she supervised were at different ends of the employer's L-shaped building. She stated that her job required her to constantly stand and walk on a concrete floor in steel-toed shoes. She estimated that she walked from one end of the building to the other and back, a distance of approximately 1000 feet, every 45 minutes of her shift, which was eight to 12 hours in length five to seven days per week. The claimant testified that she was either standing or walking on the concrete floor throughout the course of her shift, with the exception of a 30-minute meal period. She stated that on _____, she developed pain in her left knee, which she thought might be arthritis; however, she acknowledged that she realized at that time that the constant standing and walking on concrete she was doing at work was aggravating her knee pain. The claimant testified that she began missing time from work on March 8, 1999.

On March 12, 1999, the claimant first sought medical treatment for her left knee injury from Dr. L, a chiropractor. Dr. L continued to treat the claimant until March 19, 1999, when he referred her to Dr. W. Dr. W ordered a left knee MRI, which was performed on March 26, 1999, and revealed a tear of the anterior horn of the medial meniscus. On April 8, 1999, Dr. W performed an arthroscopic medial meniscectomy on the claimant's left knee. In a "To Whom it May Concern" letter dated January 19, 2000, Dr. W discussed causation, as follows:

> The patient did not have a specific point of injury and her diagnostic arthroscopy revealed a degenerative tear of the medial meniscus and early degenerative changes in the knee. I feel that the patient's history would certainly dictate if this is work related or not and as I have no other knowledge of the patient's condition prior to this, I must trust her history. If truly the patient had no pain or problem with her knee prior to the onset of

pain of February that she relates it increased walking, squatting, and other activities at work, it could be considered work related.

Dr. L testified at the hearing that he believed that the claimant's left knee injury was caused by the repetitive trauma of constant walking and standing on a concrete floor at work. He stated that the claimant attributed her injury to her work and he had no reason not to believe her, noting that her injury was consistent with the type of activity she described.

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable occupational disease injury. 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 her. 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. Generally, the existence of an injury can be established by the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). However, the testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos, *supra*; 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, the hearing officer determined that the claimant did not sustain a compensable occupational disease injury. A review of the hearing officer's decision demonstrates that she was not persuaded that the evidence presented by the claimant was sufficient to carry her burden of proving that the walking and standing that she did at work "placed her at greater risk of harm than that experienced by the general public at large." The hearing officer was acting within her province as the fact finder in so finding. Our review of the record does not reveal that the challenged determination 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). Although another fact finder could have drawn different inferences from the evidence, which would have supported a different result, that does not provide a basis for us to disturb the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant did not have disability. 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). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge