APPEAL NO. 001134

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 14, 2000. The hearing officer determined that the compensable injury of _____, does not extend to the appellant's (claimant herein) left knee. The claimant files a request for review arguing that the hearing officer's determination that the claimant's injury did not extend to her left knee is contrary to the evidence. The respondent (self-insured herein) replies that the decision of the hearing officer is sufficiently supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence and states the rationale for his decision as follows in the portion of his decision entitled "Statement of the Evidence and Discussion":

> Claimant asserts that the compensable injury extends to her left knee in addition to her spine. Claimant asserts that is was an oversight in early medical treatment not to have evaluated her left knee. Neither Claimant nor records in early medical treatment reflect any knee problem; only radiating pain into Claimant's legs is mentioned.
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> Claimant was injured when she was lifting a heavy box of potatoes. The mechanism of injury asserted by Claimant is that the left knee was hurt when she raised her left leg to brace the box from falling. Claimant is not credible that her knee was hurt. Medical evidence from [clinic] doctors supporting Claimant's assertions is not credible. During examination by [Dr. O] related to back problems, Claimant was found positive for at least one Waddell sign for invalidation and exaggeration in that Claimant's straight leg raise was not compatible with ambulation.
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> Even though all of the evidence presented was not discussed, it was considered. The findings of Fact and Conclusions of Law are based on all of the evidence presented.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. This is also true of the extent of an injury. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. 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 of 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case, the hearing officer found no causal relationship between the claimant's injury and her knee problems. We cannot say that the hearing officer was incorrect as a matter of law in reaching these conclusions. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge