APPEAL NO. 001265

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 28, 2000. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include an injury to the right knee and that the claimant had disability only from November 11, 1999, through November 12, 1999. The claimant appeals these determinations, expressing his disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant was a school cafeteria worker. He testified that on _____, he hurt his low back and right knee while pushing a freezer from the cafeteria out the front door of the school for a picnic. The carrier accepted a low back injury. According to the claimant, he hurt his right knee when, as he pushed it through a set of doors, the freezer began to tip over, striking his right knee. He also said that a wheel on the freezer broke as he pushed it through the doors. His said two ladies helped him push the freezer only as far as the first (of three) set of doors.

The claimant continued working and saw Dr. C, on October 22, 1999. Dr. C reported complaints of right knee pain and referred the claimant to Dr. G. An MRI disclosed a medial meniscus tear. Dr. B on February 22, 2000, described this MRI as showing a "degenerative meniscus tearing." In a recorded statement of October 13, 1999, the claimant made no mention of a knee injury.

Ms. G,a school volunteer in charge of the picnic, testified that she and another woman moved the freezer and the claimant helped them maneuver it once they were outside the school building. She said the wheels did not get stuck in the process and the claimant never fell or complained of being hurt. Ms. GR, the cafeteria manager and the claimant's supervisor, testified that she was at school on the day of the incident, but did not observe it. She said the claimant did not complain to her of being hurt until a few days later and did not appear to have had a knee problem. She also said that the wheel problem with the freezer occurred a week later than the date of this incident.

The claimant had the burden of proving that he injured is right knee while moving the freezer. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. In her discussion of the evidence, the hearing officer commented that the complaint of a knee injury first appeared in Dr. C's report and that there were discrepancies in the claimant's account of injuring his knee by twisting it or by striking it on the freezer and

in his statements that he was and was not assisted by two ladies in moving the freezer. She concluded that the claimant failed to meet his burden of proving a compensable knee injury as claimed. In his appeal, the claimant points out that his testimony about being helped by two ladies was incorrect and that he pushed the freezer himself. He said he had a language problem with Dr. C and was not responsible for any errors in his reports. He also asserted that Ms. G was not present when the incident occurred, but another lady was, but he could not remember her name.

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, she evaluates the evidence and determines what facts have been established. In this case, the claimant admitted to some inconsistencies in his testimony and challenged the correctness of the evidence presented by the carrier as well as the accuracy of the information contained in his doctor's reports. These were matters for the hearing officer to consider in her weighing of the evidence. 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 find the evidence sufficient to support the hearing officer's determination that the claimant's compensable injury did not include the right knee.

The claimant premises his appeal of the limited disability determination on the existence of a compensable right knee injury. Having affirmed the finding that the compensable injury did not include the right knee, we also affirm the disability determination.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge