APPEAL NO. 001364

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 May 19, 2000. He determined that there is no causal connection between the appellant's (claimant) compensable lower back injury of _____, and her subsequent knee symptoms occurring in August 1998. He further found that the self-insured had not waived the dispute to the compensability of the injury to the knee.

The claimant appeals and argues that she has proved an injury to her knee. She further assigns error in the hearing officer's finding that there was no waiver by the self-insured. The self-insured responds that the hearing officer is the sole judge of the weight and credibility of the evidence and his decision should not be set aside.

DECISION

Affirmed.

The claimant was employed as a maintenance person for the (employer) when she fell after stepping into a drain depression in the floor of her workplace. Although she said she fell down with her left leg doubled under her, several medical reports refer to her as having fallen back on her buttocks. She was treated for back and buttock pain. The self-insured stipulated to the low back injury.

The claimant contended she complained about her knee from the beginning and could not explain why these knee complaints were not recorded. She pointed to some medical records that she contended did record such pain, specifically a report from Dr. Z dated in January 1995. However, a fair reading of this report is that she has pain radiating from her hip down to the knee.

The claimant had several treating doctors, but two of her primary doctors during the period under review were Dr. C and Dr. W, the latter a referral doctor for her knee who first saw her on August 28, 1998. Dr. C noted on March 3, 1998, that the claimant was having increasing lower left extremity pain which he characterized as "radiating," and he noted that the self-insured had denied a CT/myelogram.

The claimant agreed that she broke her left leg in a fall in February 1996, but denied it affected her knee. The treatment records of Dr. C do not note this broken leg. Asked if she had told Dr. C about it, the claimant was not directly responsive but said she thought she was being treated by Dr. C at the time this happened.

Although the claimant contended she had knee pain that continued, she agreed that she did not seek active medical treatment for the knee until it became swollen and she was feverish on August 22, 1998. An MRI on September 10, 1998, reported a torn medial meniscus, an unusual lesion in the posterior aspect of the femur near the insertion of the

gastrocnemius muscle. Dr. C noted on November 24, 1998, that the claimant had continued problems with her left knee.

A January 20, 1999, note by Dr. C related that the claimant fell at her son's school and landed on her knee. The claimant had arthroscopic surgery on February 11, 1999. On March 16, 1999, Dr. C wrote in his report that the claimant's knee problems "clearly" were the direct result of the compensable injury of _____. However, Dr. W wrote on March 17, 1999, that the claimant was not sure whether her fall in 1994 was related to her knee problems. Dr. W wrote that although he could not say for certain that her knee problems related to that fall, he said that findings during surgery were "consistent with the traumatic injury to the knee." He based this upon a recited knowledge in the letter that she had no other history of trauma to the knee. The claimant's post-surgical testing showed that she had arthritis. The claimant said she has been advised that only a total knee replacement will remove the spur in her knee and provide relief.

The only mention of the claimant's broken leg in the medical records was the report of a functional capacity evaluation conducted on March 13, 1996, which noted the claimant was in a walking cast due to a fracture of the left fibula. The report noted that she complained of left low back and leg pain associated with activity and demonstrated an associated limp. Medical records from the doctor who treated the claimant's broken leg, Dr. S, were discussed but not put into evidence.

The self-insured filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) to dispute the knee injury on February 19, 1999. The claimant's position was that Dr. Z's earlier reports and a report of Dr. M referring to knee pain constituted written notice of the knee injury.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). 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 of 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.). 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

We would note at the outset that chronology alone does not establish a causal connection between an accident and a later-diagnosed injury. Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994. Therefore, the fact

that the claimant experienced knee problems at some time after her fall does not in and of itself establish the necessary link between the two. In this case, even though the claimant argued that she had informed her doctors from the beginning of knee pain, there frankly is nothing in the early medical records (and, as the hearing officer observed, nothing for nearly three and one-half years) documenting an injury to the knee. Finally, the history of how the fall occurred in medical records at the time indicates that the claimant fell back on her buttocks, with no mention of the claimant's leg being bent under her. Dr. Z's notation of pain radiating from the hip to the knee is not in and of itself evidence that a knee injury has occurred. Finally, another likely cause of injury to the knee was covered in the testimony, even though the records relating to treatment of the broken leg were not. The hearing officer's determination that the claimant's back injury did not extend to her knee is supported by the record in this case.

In this case, the claimant likewise failed to prove that the self-insured received any written notice of an injury to the knee earlier than 60 days prior to filing the TWCC-21. As the hearing officer also noted, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides that waiver does not apply in "extent of injury" cases. The Texas Workers' Compensation Commission will not impose a waiver after the effective date of this rule. *See* Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge