APPEAL NO. 001470

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 26, 2000. The record closed on June 2, 2000. The hearing officer determined that the appellant (claimant) did not prove that she suffered an injury to her left knee in the course and scope of her employment. The claimant appealed, arguing that she proved her left knee injury. The claimant asks that the decision be reversed. The respondent (carrier) responded and pointed out that although the claimant contended her knee injury was the primary injury she sustained in her fall, she could not explain why she did not seek medical treatment for several months. The carrier seeks affirmance.

DECISION

Affirmed.

The carrier did not dispute that the claimant injured her arm and elbow on _____. The controversy involved whether the claimant also injured her left knee. The claimant was employed as a receiving clerk for (employer) when she was injured. The claimant said she was pulling a pallet of products off a truck, walking backwards, and she fell backwards when her left foot caught on the corner of another pallet. She said she had to use her right leg to prevent the pallet she was unloading from falling on her. The claimant said that the result was that her legs were in a "split" position. The claimant said her body was sore for about two weeks. An accident report completed for the employer on _____, recorded the claimant's description of the accident but said that she fell on her back, right shoulder, and right elbow.

The claimant said that while the soreness faded after two weeks, she had a pulling and pain sensation in her left knee. However, she thought it would eventually go away. The claimant first sought medical treatment on February 23, 1999, from Dr. G. She said that she neither lost time nor had difficulty performing her duties at work but was moved to customer service shortly after her injury.

The claimant had an MRI at Dr. G's behest which showed a torn meniscus. At this point, she was referred to Dr. N. She had knee surgery performed on April 5, 1999. She maintained that she told Dr. G's office that she was hurt at work but they did not record it.

The claimant said she never saw a doctor for her arm and elbow injuries. She contended that her knee was her primary injury. There are records in evidence showing that the claimant was treated at a medical clinic (by Dr. G) in June and July 1998 for a right forearm and shoulder strain with an injury date of June 11, 1998. On _____, a complaint of left knee pain for about a week is noted. Dr. N's initial narrative report on April 1, 1999, noted that the claimant told him she had been hurting for about three weeks and had no recollection of a specific trauma. It was further noted by Dr. N that "two or three months ago" the claimant was routinely unloading trucks at her job but recalled no knee

injury. Dr. N wrote on December 3, 1999, that someone could have a meniscal tear over a long period of time and continue to function until the tear worsened to the point of more pain and decreased function. He wrote that "this may actually be the case" for the claimant.

The claimant denied she had any knee problems before _____. She also stated that there was no intervening accident between the injury and the time she first saw Dr. G for treatment.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. 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 have reviewed the record and find that it sufficiently supports the hearing officer's conclusions and decision.

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.).

In considering all of the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We, therefore, affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge