APPEAL NO. 001649

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 27, 2000. The hearing officer determined that the appellant's (claimant herein) compensable injury does include left knee chondromalacia but does not include osteoarthritis. The claimant appeals, arguing that the evidence established that the claimant's compensable injury included her osteoarthritis. The respondent (carrier herein) replies that there is sufficient evidence to support the decision of the hearing officer.

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 summarized the evidence in her decision and we adopt her rendition of the evidence. We will only touch on the evidence germane to the appeal. The parties stipulated that the claimant suffered a compensable left knee injury on _____. The only issue before us on appeal is whether the claimant's left knee injury included osteoarthritis. Most of the medical evidence in the case dealt with whether or not the claimant's injury included chondromalacia, but as the hearing officer's decision that it is part of the compensable injury was not appealed, we need not address this further. There was conflicting medical evidence as to whether or not the claimant's left knee injury included osteoarthritis. The claimant's treating doctor indicates that this condition is related to her chondromalcia and Dr. X, the carrier's required medical examination doctor, states that the osteoarthritis is not related to the claimant's compensable injury.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case 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). Applying this standard, we find that the hearing officer's decision was sufficiently supported by the medical opinion of Dr. X.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge