APPEAL NO. 001691

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 June 28, 2000. The hearing officer determined that the appellant's (claimant herein) injury sustained on _____, does not extend to include an injury to her bilateral knees. The claimant appeals, arguing that the evidence, including all the medical evidence, supports that her compensable injury extended to bilateral knees. The claimant also argues that the respondent's (carrier herein) refusal to authorize testing of her knees impedes her ability to prove her case. The carrier responds 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 parties stipulated that the claimant sustained a compensable injury on _____. The claimant described this injury as taking place when she was moving a very heavy piece of furniture at work. Initial medical reports showed that the claimant was having back pain which extended into her legs. On September 9, 1999, Dr. N, the claimant's new treating doctor, diagnosed the claimant with internal derangement of the left knee. On October 7, 1999, Dr. N diagnosed internal derangement of the right knee. Dr. N related the claimant's knee problems to her 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).

In her appeal the claimant argues that the overwhelming evidence in the case supported the proposition that her injury extended to her bilateral knees in that her testimony and medical evidence from her doctor stated this and the carrier presented no contrary evidence. As the fact finder the hearing officer was not required to be persuaded by either the claimant's testimony or her medical evidence. It was the province of the hearing officer to determine what weight to give this evidence. Applying the standard of review stated above, we do not find that the hearing officer's determination that the claimant's injury did not extend to bilateral knees was contrary to the overwhelming evidence.

The claimant argues that the carrier's refusal to authorize an MRI to confirm her knee injury impedes her from proving her bilateral knee injury. The claimant presented medical evidence from her treating doctor relating her bilateral knee derangement to her compensable injury. Thus, the claimant had favorable medical evidence in spite of the lack of an MRI.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCURRING OPINION:

The Decision and Order of the hearing officer contains a fair and accurate Statement of the Evidence which is adopted. I concur based upon the evidence presented at the hearing and affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge