APPEAL NO. 001709

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 27, 2000. The hearing officer determined that the respondent's (claimant herein) _____, injury extends to include avascular necrosis (AN) and that the claimant's _____, injury does not extend to include the claimant's AN. The appellant (carrier herein) files a request for review, arguing that the hearing officer erred in finding that the claimant's _____, injury extends to include AN. The carrier argues that the evidence is insufficient to support the hearing officer's finding that the claimant's _____, injury aggravated her AN. The claimant responds that there is sufficient evidence in the record to support this finding.

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 outlines the relevant evidence in her decision and we adopt her rendition of the evidence. We will briefly touch on the evidence germane to the appeal. It was undisputed that the claimant suffered a compensable injury on _____. The claimant described this injury as taking place when she fell in a bathroom at her place of employment. A February 24, 1999, MRI showed that the claimant had grade IV AN of the right hip. Dr. C, stated as follows in a letter dated March 19, 1999:

> The question has come up as to whether or not this is related to the work injury of _____. I have discussed with [the claimant] the probability that the need for her total hip replacement on the right may or may not be due to her fall of _____. In all probability she had some degree of [AN] of the hips prior to the time of her _____ date of injury primarily on the basis that there is bilateral disease. I do feel however that the underlying condition of the bilateral [AN] was accelerated to the point where she is requiring total hip replacement as a result of her _____ injury. This appears to be a situation where there is a pre-existing problem that is exacerbated or accelerated by the work 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 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

The aggravation of a preexisting condition by a compensable injury is compensable under the 1989 Act. Peterson v. Continental Casualty Co., 997 S.W.2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet. h.); Texas Workers' Compensation Commission Appeal No. 960622, decided May 13, 1996. Dr. C stated that the claimant's _____, injury accelerated her preexisting AN. We find this evidence sufficient to support the hearing officer's finding that the claimant's _____, injury aggravated the claimant's AN and her conclusion that the _____, injury extended to AN. *See* Texas Workers' Compensation Commission Appeal No. 000733, decided May 30, 2000. We do not believe that the mere passage of time between the claimant's injury and the diagnosis of AN alone constitutes the great weight and preponderance of the evidence contrary to this medical evidence.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge