APPEAL NO. 001818

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 July 7, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to her low back, right knee, and right hip on _____, and had disability from this injury. An issue by agreement was whether her current condition was caused solely by a prior injury unrelated to her employment. Although not stated in the decision, the injury issue had been amended by agreement to delete reference to upper right leg and add the right hip.

The hearing officer found that the claimant proved that she injured her right knee and had disability as a result from _____, through the date of the CCH. The hearing officer found that a back injury had not been proven by a preponderance of the evidence. She also found that a prior knee injury was not the sole cause of the claimant's condition.

The claimant appeals and asserts that she proved injury to her back and upper right leg. She argues that her testimony was enough to establish the extent of injury. The respondent (self-insured) responds that the hearing officer's fact determination is supported by the evidence.

DECISION

We affirm the hearing officer's decision.

The claimant was a special education teacher for the (employer). She taught middle-school-aged disabled students whose disabilities ranged from emotional and psychological disabilities to autism and physical disabilities. On _____, as she was moving a disruptive student to a "time out" mat, he grabbed her by her sweatshirt and pulled her down as she was bent over him. The claimant fell onto her bent knees. She was helped by teachers aides to a chair and then to the nurse's office and was ultimately treated at a hospital.

The claimant sought treatment from Dr. P beginning February 7, 2000. She was ultimately found to have a torn meniscus in her right knee. The claimant also asserted that she hurt her back and hip in this incident as well and was referred by Dr. P to Dr. G for further evaluation. The critical medical report from Dr. G which was put into evidence by the claimant is a faulty photocopy that is cut off as Dr. G begins to describe her impression of the claimant's back pain; what can be deciphered is an impression that there is no specific neurological abnormality. A later MRI of the lumbar area was essentially normal except for very mild degenerative conditions. The claimant was 57 years old at the time of her injury.

The prior incident that the self-insured asserted was the cause of the claimant's knee problems occurred during the Christmas break in December 1999, when the claimant said she tripped over a speed bump while leaving a store and fell forward. She said her right knee was not bent but flat when it struck the pavement and she sustained a "rug burn." The claimant said that no problems resulted that affected her ability to move but after she returned to school, she began to have some pain and swelling in her right knee, for which she was treated by a medical clinic on January 26, 2000. X-rays of the knee the following day showed no evidence of fracture or dislocation. The clinic doctor wrote restrictions advising limited walking, no standing for more than 15 minutes, and no lifting for two weeks.

We would first note that it was the claimant's attorney's proposal to remove the upper right leg from the disputed issue. We are, therefore, constrained from finding any error on the part of the hearing officer in not addressing a specific body part that was taken out of the issue before her. Although the hip is not specified in a finding of fact, the hearing officer has essentially limited the compensable injury to the claimant's right knee.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ).

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).

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). The hearing officer's determination that the claimant failed to prove injury to the back (as opposed to pain in other regions of her body) is sufficiently supported by the record.

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 affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge