APPEAL NO. 001856

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 July 17, 2000. The restated issues were:

1. Did Claimant [appellant] suffer a compensable injury to his right knee on _____?

2. What is the extent of [the] compensable injury to Claimant's left knee?

With regard to those issues, the hearing officer determined that the claimant did not suffer a compensable injury to his right knee on _____, and that the claimant's compensable injury to his left knee on _____, extends to aggravation of degenerative joint disease along with a torn lateral meniscus. The claimant appealed, contending that he had injured his right knee in the form of an aggravation of his degenerative joint disease as supported by medical evidence. The claimant contends that the hearing officer gave too much weight to some records and not enough weight to others. The claimant also appeals the hearing officer's decision regarding the extent of the injury to the left knee as not including a rupture to the anterior cruciate ligament (ACL). The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as the self-insured's cemetery supervisor. It is relatively undisputed that at about 10:00 p.m. on _____, the claimant was walking across an open area to tell some kids to leave the cemetery when his left foot stepped into a hole. The self-insured has accepted liability for a left knee torn lateral meniscus. The testimony and evidence supports the fact that the claimant had sustained injuries to his knees in the _____ and that the claimant from time to time through the years had swelling in his right knee after playing golf and dancing. The claimant initially reported only a left knee injury and in an e-mail and conversation with the self-insured's risk manager appeared to indicate only one knee "was hurt on the job" but if he needs "a knee replacement on the injured knee I am going to have them both done at the same time and expect my insurance to pay."

The claimant's family doctor referred the claimant to Dr. K, an orthopedic specialist who, in a report dated November 30, 1999, wrote:

> [The claimant] is seen for bilateral knee complaints secondary to an injury in which he sustained a hyperextension injury to the left knee when he stepped in a hole with a preexisting history of pain and discomfort in the right knee.

The claimant was also seen by Dr. B, the self-insured's required medical examination doctor, who, in a report dated April 11, 2000, noted "underlying degenerative joint disease in both knees, particularly severe on the right-hand knee" and that the claimant had "new damage sustained to the left knee in the on-the-job injury of _____ [which] aggravated his pre-existing osteoarthritis and also caused the lateral meniscus tear." Dr. B was "uncertain whether the rupture of the ACL [to the left knee] is new or old. . . ." After obtaining additional records and documentation, Dr. B on May 9, 2000, was of the opinion that the claimant sustained "a new acute injury to the left knee" and that there was no "compelling evidence that the right knee was injured on the job."

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer found that the claimant had not injured his right knee on _____ and that the injury to the left knee includes the stipulated torn lateral meniscus and aggravation of degenerative joint disease and inferentially does not include a rupture of the left ACL. The hearing officer's decision is supported by the evidence briefly recited.

We will reverse a factual determination of a hearing officer only if that determination is so against 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and

order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge