APPEAL NO. 001996

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 24, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury at work on _____, and whether he had disability from February 11 to February 22, 2000, as a result.

The hearing officer held that the claimant's injury was compensable, that his walking on a ramp furthered the activities of the employer, and that he had disability for the time period sought.

The appellant (carrier) appeals, arguing that an injury from mere walking is not compensable and there was no evidence that an instrumentality of the employer was involved. The claimant responds that the decision should be affirmed.

DECISION

Affirmed.

The claimant worked for over 20 years as a mechanic for (employer). He said that he typically worked a 13-1/2 hour day, and that his work involved not just being on his feet a lot but kneeling to get down and conduct his repair work. He said that on _____, during his overtime shift, he had walked up an inclined concrete ramp, along a path, and up some steps to inspect a compressor he was to work on, and discuss with a coworker the tools he would need. As he returned to his truck to get the tool to take back, he was walking down the inclined ramp, talking to his coworker, and felt a snap in his left knee like a rubber band. The claimant did not fall or slip, but could not thereafter put weight on the knee. The claimant said that he might have twisted. He was taken to the hospital. The claimant required surgery for a torn medial meniscus and was off work from February 11th to the 22nd.

The claimant said that the employer offered an annual physical each year, which had been two weeks before his injury. He said that he mentioned to the company doctor that his knee had been causing some discomfort. The doctor examined the knee, found no swelling and advised that he should take an analgesic and then consult his own doctor. The claimant said that he had no knee problems prior to the onset of the discomfort about which he asked the company doctor.

We do not agree that there is no evidence of an instrumentality or that the injury occurred from mere walking, as in Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998. In any case, the Appeals Panel has made clear subsequently that a broad interpretation will not be accorded to Appeal No. 980631, *supra,* so that an employee will be held to move in and out of the scope of employment by virtue of walking from one work station to another. *See discussion on this issue in* Texas

Workers' Compensation Commission Appeal No. 990252, decided March 25, 1999; *also* Texas Workers' Compensation Commission Appeal No. 992490, decided December 29, 1999; Texas Workers' Compensation Commission Appeal No. 000074, decided February 25, 2000. We note that an inclined plane, just like stairs, changes the angle of walking and the stresses brought thereby on the knee. The claimant said that he was walking down the ramp during overtime hours on a day which also involved kneeling and going up and down some stairs to look at the equipment he was to configure. There was also some evidence that his work caused a gradual onset of knee discomfort for which walking down the ramp was the proverbial "straw that broke the camel's back." The finder of fact in this instance found that the injury was one "arising from" and during affairs in furtherance of the employer's business. This is plainly supported by the record.

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 of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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). We cannot agree that the great weight of evidence is against the hearing officer's decision, and affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Judy L. Stephens
Appeals Judge