

APPEAL NO. 002048

This appeal is brought 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 August 10, 2000. The issue was whether the appellant (claimant) sustained an injury to his right knee in addition to his neck, right shoulder, and low back on _____. The hearing officer determined that he did not. The claimant appealed; attached to his appeal some documents that were admitted into evidence at the CCH; contended that the hearing officer did not review all of the evidence; stated information favorable to his position; stated that the attorney representing the respondent (carrier) remained in the hearing room after he and the ombudsman assisting him departed the hearing room; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The carrier responded; asked that the Appeals Panel disregard the claimant's statements, testimony, and documentary evidence not contained in the record of the CCH; urged that the evidence is sufficient to support the decision of the hearing officer; and requested that it be affirmed.

DECISION

We affirm.

In his appeal, the claimant stated that the attorney representing the carrier stayed in the hearing room after he and the ombudsman assisting him left the hearing room. He does not state that there was any communication between the attorney and the hearing officer after the hearing officer announced that the CCH was adjourned, and we have no information to indicate that there was any such communication. There is no reversible error. We do not know any of the circumstances related to the allegation of the claimant. However, we again encourage hearing officers and other participants in CCHs to take appropriate action to avoid even the appearance of impropriety.

The Decision and Order of the hearing officer contains a statement of the evidence that includes summary of some of the claimant's testimony, summaries of medical records, and quotations from medical records. In his Decision and Order, the hearing officer stated that he considered all of the evidence. There is nothing to indicate that he did not. Only a brief summary of the evidence will be included in this decision.

The claimant testified that on _____, he was driving a van; that the van went off the road, struck a road sign, and went into a ditch; that he was wearing a seat belt and the air bag did not deploy; and that he was thrust around, hit his head on the top of the van, and must have hit his knees on the dash of the van. An Initial Medical Report (TWCC-61) dated _____, states that the claimant reported neck and bilateral shoulder pain and blurred vision and denied other injuries or complaints. In a Report of Medical Evaluation (TWCC-69) dated May 17, 1999, a designated doctor certified that the claimant reached maximum medical improvement on March 26, 1999, with an 11% impairment rating. An attachment to the TWCC-69 states that the diagnoses are cervical disc

syndrome, cervical IVD degeneration, lumbar disc syndrome, and shoulder sprain/strain; contains headings of "Left Knee" and "Right Knee" with comment under each that quadriceps and hamstrings were strong; and says that six percent impairment was assigned for the lumbar spine and five percent impairment was assigned for the cervical spine. An emergency room record dated July 29, 1999, states that the claimant complained of knee pain of three months duration and that he twisted his knee coming out of a room. A report dated August 11, 1999, states that the claimant did not recall a single injury and that his knee had been getting worse over the last six months. Documents dated after that date and undated addendums to reports dated before that date from doctors who treated the claimant contain opinions that the knee injury is part of the compensable injury. The claimant testified about comments in medical records, his physical condition, and actions he took to bolster his position that he injured his knee in the motor vehicle accident.

The burden is on the claimant to prove by a preponderance of the evidence the extent of an injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). An appeals level body is not a fact finder, and it 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). In reviewing the evidence, we did not consider comments of the claimant in his appeal that are not in the record. Only were we to conclude, which we do not in this case, that the hearing officer's determination that the claimant did not sustain an injury to his right knee on _____, is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb that determination. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and the order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge