

APPEAL NO. 002088

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 was held on August 17, 2000. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury to her left knee on _____. The hearing officer determined that the compensable injury does not extend to an injury to the claimant's right hip, right leg, right knee, right ankle, right foot, or lumbar spine. The claimant filed an appeal that is considered to be an appeal of the sufficiency of the evidence to support the decision of the hearing officer. The carrier responded, commented on the sufficiency of the appeal, and urged that the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified that she injured her left knee when it was hit by a cart on _____; that she had work-related injuries to her back, left foot, knee, and both hands and a work-related hernia prior to that date; that she did not limp after those injuries; that she put more weight on her right leg after the injury to her left knee and limped; that she had three surgeries on her left knee; that after the first surgery, her back and right hip started hurting first and that sometime later her leg and foot started hurting; and that her doctor told her that she had right leg pain because of the injury to her left leg and the way that she walked. The claimant offered into evidence some medical records, but they were not admitted because they were not timely exchanged and the hearing officer did not find good cause for not timely exchanging them.

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). Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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. 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). Only were we to conclude, which we do not in this case, that the hearing officer's determination 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:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge