APPEAL NO. 002370

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 September 19, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable left knee injury on _____ (all dates are 2000 unless otherwise stated); that the claimant failed to give timely notice of his alleged injury to the employer (no determinations were made as to good cause, *see* Section 409.002(2)); and that the claimant did not have disability.

The claimant appeals, briefly recites some evidence in his favor on all three issues, and contends the great weight of evidence is contrary to the hearing officer's decision. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed as reformed.

The claimant was employed as a warehouse worker/delivery person for a furniture store (employer). The claimant testified, and it is relatively undisputed, that on _____, the claimant was helping load a truck and his left leg slipped or fell between the truck bed and the loading dock. Present were several coworkers, including PV, the claimant's brother-in-law, and JR, the claimant's direct supervisor. There was testimony that the coworkers and JR were kidding the claimant for being "stupid" for falling. Later that day, while at the employer's store, another employee was arrested for the theft of merchandise and implicated the claimant. The employer conducted an investigation and the next day, _____, terminated the claimant for his perceived involvement with the theft incident. On two or three occasions between March 25 and May 10, the claimant called and spoke with Mr. R, the employer's warehouse and distribution manager, asking for his job back and denying any involvement with the theft scheme, without any mention of a knee or other injury. Mr. R testified that the claimant did not report an injury to him at any time prior to May 10 and that in a subsequent investigation, JR denied that the claimant either reported an injury or that JR had knowledge of an injury (since JR did not testify and his version is presented through hearsay, it is unclear whether JR is also denying the incident of the claimant's leg falling between the truck and dock).

At some point, the claimant retained an attorney and the claimant's attorney referred him to (clinic). Clinic records show progress notes and S.O.A.P. notes beginning May 10 through July 26, for treatment of left knee pain. An MRI was performed on June 22, at the request of Dr. R, a chiropractor. The MRI stated that the "medial meniscus is intact without a tear. Medial and lateral [illegible] ligaments are normal." There was no abnormality and "no significant effusion" of the left knee. However, in response to a letter from the claimant's attorney asking for a diagnosis, Dr. R, in a report dated August 31, comments that the claimant's pain "is indicative of a medial meniscal tear," that in his professional

opinion the claimant "has suffered a medial meniscal tear of the left knee" and that soft tissue injuries are difficult to determine on MRIs.

Unfortunately, the hearing officer made a seemingly inconsistent finding and conclusion (not specifically raised by the claimant) as follows:

FINDING OF FACT

2. Claimant sustained an injury to his left knee in the course and scope of his employment on _____.

CONCLUSION OF LAW

3. Claimant did not sustain a compensable injury to his left knee on _____.

Our review of the hearing officer's questions at the CCH and the Statement of the Evidence leads us to interpret the hearing officer as meaning that the claimant sustained the fall between the truck and dock incident on _____ but that incident did not result in a compensable injury.

The claimant contends that JR, the supervisor, was present when he fell, that the claimant showed JR his bruised knee, that "the claimant specifically showed him [JR] his bruised and swollen knee, [and that] the claimant timely notified his employer of an injury." However, according to Mr. R, JR denied having any knowledge of the claimant's bruised knee or that the claimant had sustained an injury. The evidence is in conflict, both regarding the injury and any report or knowledge that the employer may or may not have had regarding an injury. 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). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. 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. 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). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence

could 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 determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Section 409.001 requires that an employee notify the employer of an injury by the 30th day after the injury occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. Whether, and if so, when, notice is given is a question of fact for the hearing officer to decide. The hearing officer apparently rejected the claimant's contentions that the claimant had reported the injury to JR or that JR had actual notice of the injury and found that the claimant first notified his employer of the claimed injury on May 10 and such notice was not timely. That finding is supported by the evidence.

In that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

We affirm the hearing officer's decision and order, reforming Finding of Fact No. 2 to say that "Claimant sustained an incident involving his left knee . . . ." Otherwise, 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. King, *supra*. We do not so find and, consequently, the decision and order of the hearing officer are affirmed as reformed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kathleen C. Decker
Appeals Judge