APPEAL NO. 002507

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 October 6, 2000. With regard to the agreed-on issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____ (all dates are 1999 unless otherwise noted), which included both her right knee and low back.

The appellant (carrier) appealed, contending that the claimant initially did not complain about her knee and that the claimant went six months before seeking medical treatment, and pointing to inconsistencies in the histories the claimant gave to the doctor and in reporting the injury. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant testified how on _____, she fell forward onto some rollers with her right knee and then jerked backward, hitting her back on some other rollers. The claimant testified that she reported her injury to her supervisor the same day and an accident report was completed the next day. The accident report states that the claimant "slipped on a roller and hit her knee on the roller." Added to the report on a separate line is "claimed back injury on _____." The claimant testified that she asked to see a doctor but was told that she had to see a doctor on her own. The claimant continued to work; however, it is not clear whether it was regular or modified duty. The claimant testified that her back got progressively worse. It is undisputed that she first received medical attention on June 30 from Dr. Mac, a chiropractor.

A questionnaire the claimant filled out for Dr. Mc on June 30 only contains complaints of low back pain which began "__ months ago" and "gradually increased." In a handwritten "history form" (apparently written by Dr. Mc) is a notation as chief complaint:

> L/B [pain or complaint] across bottom: Fell on Rt knee & had scratches on both knees w/ bruising. L/B afterwards **6** started hurting one-month afterwards.

Another notation suggests that the claimant has "been hurting–No past hx–post four yrs" and referenced "pulling plastic @ job." A "Work/Comp History" dated July 14 completed by the claimant references the roller but also "slip on plastic and hit roll with my knees and went back and hit my back."

In a brief report dated February 20, 2000, Dr. Mc references that the claimant "had fallen to her knee at work and subsequently began experiencing pain in her low back" and concludes that the claimant's back injury is work-related. Subsequently, Dr. M was

appointed as a required medical examination doctor who in a report dated April 27, 2000, diagnosed a lumbar sprain and right knee bursitis. Dr. M concluded "that the diagnosis given to [the claimant] when she presented to [Dr. Mc] on June 30, 1999 is consistent with her history of having a low level back pain since her injury on _____."

The hearing officer found that the claimant's fall on January 16 injured her right knee and low back. The carrier points out inconsistencies in the medical reports and the claimant's testimony, and emphasizes the length of time before the claimant sought treatment and that she continued to work during this time.

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).

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

Gary L. Kilgore
Appeals Judge