APPEAL NO. 002762

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 November 9, 2000. With regard to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury to his left knee on _____ (all dates are 2000 unless otherwise noted), and that the claimant had disability from March 31 through July 9.

The appellant (carrier) appeals, asserting that the claimant had a preexisting knee condition; that the medical evidence was contradictory; and that the claimant had not sustained an injury and, therefore, did not have disability. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

Much of the evidence is conflicting. The claimant testified, and demonstrated, how he was attempting to attach an 80-pound "vibrator" beneath a railroad car and that the vibrator fell, glancing off his left knee. It is relatively undisputed that the claimant had a preexisting bilateral knee condition and that the claimant did, in fact, work with the vibrators in the fashion that he asserts.

The claimant sought medical attention from Dr. H, whose records do not reflect a history of a work-related injury (Dr. H had been treating the claimant for his preexisting knee condition). Dr. H referred the claimant to Dr. S. Dr. S performed arthroscopic surgery on the left knee on April 25. In a report dated August 4, Dr. S recites a history of a work-related injury, while the claimant was working with a "70-80 pound" vibrator.

Both the testimonial and medical evidence are subject to conflicting interpretations. 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).

Because we are affirming the hearing officer's decision that the claimant sustained a compensable injury, we also affirm the decision on disability as being supported by the evidence.

Upon review of the record submitted, we find no reversible error and 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:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge