APPEAL NO. 002925

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 November 15, 2000. The hearing officer found that the claimant sustained a knee injury in the course and scope of employment on _____, and had disability beginning May 16, 2000, to the date of the CCH.

The carrier appeals based on the weakness of the evidence supporting these findings, and the claimant responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant sustained a compensable injury and had disability therefrom. Because there is conflicting evidence from which different inferences plainly could have been drawn, it is useful to point out that it was primarily the responsibility of 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, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The hearing officer has expressly stated that she found the claimant to be credible and therefore believed the claimant when she asserted that she had told her doctors consistently, although it wasn't documented by them at first, that she banged her injured knee as well as twisted. The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). Consequently, the hearing officer could choose to believe the claimant and disbelieve the fairly unequivocal testimony of Ms. B concerning a conversation in which the claimant inquired and was advised that she could no longer claim benefits due to a prior knee injury, a conversation utterly denied by the claimant. The claimant agreed that when her knee was injured on _____, she had no accrued sick leave, but the hearing officer could choose to discount this as a motive in claiming a new injury. There was evidence that the claimant was on final notice disciplinary action due to excessive and unexcused absenteeism.

In fact, the medical evidence is indicative of traumatic injury to the knee that the hearing officer could believe could not be simply "lived with" during the four years since the claimant's 1996 treatment for her knee. The claimant was treated the day she said she was injured and there was objective evidence of injury. A coworker sitting across from the claimant was recorded as saying that she saw the claimant turn and then have problems with her knee and was later told by the claimant that she hit her knee. The claimant testified not only to hitting her knee, but to a twisting motion as well, as she was performing her job. Consequently, the mechanism of injury involved more than a blow to the knee.

Her referral doctor, Dr. D, disputed that the torn anterior cruciate ligament tear was "chronic" or old as reported by Dr. E after reviewing the claimant's May 17, 2000, MRI. She was off work and taken off work by her doctors after the date of injury.

An appeals-level body is not a fact finder, and 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). We will not reweigh the evidence and as there is sufficient evidence which, if believed by the earing officer, supports the decision, we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge