APPEAL NO. 020094
FILED MARCH 4, 2002

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 December 7, 2001. The hearing officer found that the appellant's (claimant) injury extended to sprains/strains in all spinal regions but that the claimant did not injure his left knee in the course and scope of employment on _____. The hearing officer also found that the claimant had disability from June 1 through November 15, 2001, but no time thereafter to the date of the CCH.

The claimant has appealed and asserts that the decision is against the evidence. The claimant attaches an operative report not offered at the CCH. The respondent (carrier) requests that the fact findings of the hearing officer be upheld and argues that the additional evidence cannot now be considered

DECISION

We affirm the hearing officer's decision.

We would first note that we will not consider evidence submitted for the first time on appeal; our review is limited to the record below. Section 410.203(a)(1). Although the claimant asserts that the hearing officer abused his discretion by not holding the record open for this operative report, we do not agree. During the CCH, it was the hearing officer who inquired as to whether the operative report was included in the evidence. At this point, the claimant's attorney offered to try to get it if the record were held open a few days, and the carrier's attorney said that she would not oppose this although she wanted an opportunity to respond. The hearing officer stated that he would not leave the record open and the case proceeded without objection. The claimant's operation had been performed at the end of October, over a month before the CCH, and there was ample opportunity for the claimant to have obtained and offered the report. We cannot agree that the hearing officer's disinclination to leave the record open, in the context of the discussion that occurred, amounts to an abuse of discretion.

Essentially, the claimant quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer has set forth the pertinent facts; although he may have agreed that the claimant struck his knee on the ground, we cannot agree with the claimant's appeal that the hearing officer must then necessarily find an injury as a result. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). He could determine that a mechanism of striking the knee would not result in the type of injury for which the claimant ultimately had surgery. The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo

1974, no writ). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Edward Vilano
Appeals Judge