APPEAL NO. 021196
FILED JULY 3, 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 April 15, 2002. The hearing officer held that the appellant's (claimant) knee injury did not extend to a torn meniscus. The claimant appeals, arguing that a previous decision that she had a knee injury is *res judicata* for the torn meniscus, which, in any case, is causally linked to the original knee injury in the evidence. The respondent (self-insured) responds that the Appeals Panel may not consider the issue of *res judicata,* which was not made an issue at the CCHs, and the self-insured recites evidence favorable to the decision.

DECISION

We affirm the hearing officer's decision.

RES JUDICATA

We will first consider the argument about *res judicata* of a previous hearing decision, which we do not agree must be reported as an issue before we can consider it. The claimant contended that she injured her knee through repetitive trauma as a shuttle bus driver. The existence of a repetitive trauma knee injury, with a date of September 27, 2000, was determined after a previous CCH, and the decision was affirmed by the Appeals Panel. Significantly, that decision described the claimant's knee injury as a pulled ligament and patellar tendonitis of the right knee. Although the benefit review conference makes mention of a possible meniscal tear, such was not mentioned in the CCH decision. Ironically, any inference about whether the decision was *res judicata* on the existence of a meniscal tear as part of the knee injury would appear to be contrary to its inclusion; however, we cannot agree that this aspect of the claimed injury was litigated at the prior CCH or specifically ruled upon. Therefore, the hearing officer in the present proceeding was free to consider the evidence and the issue of extent.

EXTENT OF INJURY

The record shows that the claimant underwent large gaps in medical treatment, and further held two subsequent jobs following treatment for the conditions described in her prior CCH decision. One of those jobs also entailed driving a shuttle bus for up to four hours a day for two or three months. It was after this that the purported meniscal tear was diagnosed by some of her doctors from an MRI and that she was told that driving a bus for several hours could cause a small tear to occur. Furthermore, the doctor who examined the claimant for the self-insured testified that he only saw some chondromalacia on the MRIs and no abnormalities of cartilage or ligaments. He testified that driving a bus could not cause a torn meniscus. He opined that if the

claimant had had an injury to her knee it would have been a mild strain, but that when he examined her in October 2001, there was only a degenerative age-related condition.

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). 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). 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.). 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). The decision of the hearing officer is not against the great weight and preponderance of the evidence, and the decision and order are affirmed.

The true corporate name of the insurance carrier/self-insured entity is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

COUNTY ATTORNEY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Susan M. Kelley
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Roy L. Warren
Appeals Judge