APPEAL NO. 022567
FILED NOVEMBER 20, 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 September 10, 2002. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable right knee injury of _____, did not extend to include or result in his torn meniscus and anterior cruciate ligament (ACL) in his right knee. The hearing officer further determined that the claimant's impairment rating (IR) was zero percent, as assigned by the designated doctor. In his appeal, the claimant argues that the evidence was not sufficient to support the hearing officer's determinations. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, did not extend to include or result in his torn meniscus and ACL in his right knee. The claimant argued that these injuries were either present on the date of injury or caused by the injury itself over time. An MRI in the record, dated April 17, 2000, does not show any torn meniscus or ACL, and the resulting arthroscopic knee surgery, in July of 2000, was to treat chondromalacia, and no tears were noted in the surgery report in evidence. The claimant had a second arthroscopic knee surgery in March of 2002, where the tears were noted and repaired per the surgical report in the record, but, as the carrier argued, this surgery was nearly two years after the date of injury, and there were no signs of these tears at the previous surgery or in the previous objective tests. The carrier argued, and the hearing officer agreed, that the claimant could not causally connect the meniscus and ACL tears with his compensable injury.

The hearing officer did not err in determining that the claimant's IR was zero percent. Section 408.125(e), which reads, in pertinent part, "[t]he report of the designated doctor shall have presumptive weight, and the commission shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary." While there were other IRs from other doctors in the record, the hearing officer decided to adopt the certification of zero percent IR from the designated doctor, giving that rating presumptive weight. The hearing officer also noted that the other doctor's IRs appeared to stem from differences in medical opinions, and that some of the doctors rated the noncompensable meniscus and ACL tears.

In his appeal, the claimant asks that the Appeals Panel take into account that the designated doctor was not an "orthopedic doctor." The claimant's argument on this point is raised for the first time on appeal. The claimant's position at the CCH was that the designated doctor did not like him and gave him short shrift in his examination. We

decline to consider information or argument, based on evidence outside of the record, presented for the first time on appeal.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of 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, 702 (Tex. Civ. App.-Amarillo 1974, no writ). 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not find so here.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
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9120 BURNET ROAD
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_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Veronica Lopez
Appeals Judge

_____
Michael B. McShane
Appeals Panel
Manager/Judge