APPEAL NO. 032805
FILED DECEMBER 4, 2003

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 October 2, 2003. With respect to the sole issue before him, the hearing officer determined that the appellant's (claimant) _____, compensable injury extends to a left anterior cruciate ligament tear and left medial meniscus tear, but not to traumatic arthritis or chondromalacia. On appeal, the claimant asserts that the hearing officer erred in failing to reword the disputed issue, and otherwise appeals the hearing officer's determinations regarding the compensability of traumatic arthritis and chondromalacia on sufficiency of the evidence grounds. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The hearing officer's determinations regarding the compensability of a left anterior cruciate ligament tear and left medial meniscus tear are unappealed, and have become final. Section 410.169.

DECISION

Affirmed.

We first address the issue of whether the hearing officer erred in failing to reword the disputed issue. At the commencement of the CCH, the hearing officer read the disputed issue into the record and asked if the parties agreed that that was in fact the disputed issue. Both parties indicated their agreement. After the close of the evidentiary portion of the CCH, and during the carrier's closing argument, the hearing officer proposed changing the wording of the disputed issue. The carrier objected to the proposal, and the hearing officer left the issue worded as certified out of the benefit review conference (BRC). There is no evidence in the record to show that the claimant responded in writing to the BRC report pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(c) (Rule 142.7(c)) or made a request pursuant to either Rule 142.7(d) or Rule 142.7(e). We review the decision of the hearing officer to add, not to add, or to reword an issue on an abuse-of-discretion standard. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). In light of the claimant's failure to follow the procedures set out in Rule 142.7 to request the rewording of the issue, or even to raise it on her own at the CCH, we cannot say that the hearing officer abused his discretion by refusing to do so.

The issue of extent of injury presents a question of fact. 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 of the weight and credibility that is to be given to 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). This is equally true regarding medical evidence. Texas Employers Insurance

Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, 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). Applying this standard, we find sufficient evidence in the record to support the hearing officer's resolution of the issue.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY**
**800 BRAZOS STREET, SUITE 750**
**AUSTIN, TEXAS 78701**.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge