APPEAL NO. 980057

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 9, 1997. He (hearing officer) determined that the respondent (claimant) sustained a compensable right knee injury on _____, and had disability from June 16, 1997, through the date of the CCH. The appellant (carrier) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a service technician at an apartment complex. He testified that on _____, he was carrying a ladder from one building of the complex to another and that, as he rounded the corner of the building, he lost control of the ladder, stumbled and fell, hitting the lower inside part of his right knee on a post. Shortly thereafter, (Mr. M), an acquaintance, drove by in a truck, saw him lying on the ground, and asked if he was okay. The claimant said he told Mr. M that he thought he was okay and declined an offer of assistance. The claimant also testified that (Mr. W), a co-worker, was at the scene within minutes, saw him on the ground, and carried the ladder to the place where it was needed. The claimant further testified that he reported the incident at the end of his shift, about 5:00 p.m., to (Ms. E), the complex manager. His last day at work was June 16, 1997. He was ultimately diagnosed by (Dr. M) with a torn medial meniscus and had surgery on November 13, 1997. Dr. M noted that the meniscus tear was consistent with trauma and distinguished this condition from the claimant's prior knee injury and surgery. The claimant admitted to a prior knee injury and surgery and that he coached a little league baseball team, but denied that he injured himself while coaching.

Mr. M testified to essentially the same account given by the claimant and admitted that when he first discussed the incident with an investigator for the carrier he mistakenly identified the wrong place on the property as the place where claimant fell. Other written statements confirmed that the claimant did not appear to have injured himself while coaching. (Mr. N), a co-worker, testified that the claimant told him he hurt his knee while running at baseball practice and that it swelled up "like a balloon." He believes this conversation took place before _____, but could not recall exactly when. Mr. W testified on direct examination that he did not recall coming up to the claimant when he fell or helping him carry the ladder and that claimant said he hurt himself at baseball practice. On cross-examination, Mr. W said he "may have helped" with the ladder, but could not recall. Ms. E testified that the claimant regularly complained about his knee, but denied that he reported to her that he hit his knee on the post at work on _____. She said she

did not learn that he was claiming a work-related injury until mid-June 1997, when he called to ask for the name of a referral doctor.

The claimant had the burden of proving that he injured his knee as claimed on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide and, in this case, could be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. The hearing officer, as fact finder, was the sole judge of the weight and credibility of the evidence. Section 410.165(a). The evidence in this case was in stark conflict. The hearing officer considered the claimant to be credible and resolved the conflicts in the evidence in favor of the claimant. Under our standard of review, we find no reason to reverse this determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

At the CCH, the carrier's attorney conceded that the claimant had a torn medial meniscus and that this condition prevented him from working. It argued only that the injury was not work-related. On appeal, it suggests that regardless of the cause of the injury, the medical evidence does "not place the Claimant in a non-work capacity." Whether the claimant had disability as claimed was a question of fact for the hearing officer to decide and it, too, could be proved by the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The claimant testified that he could not work after June 16, 1997, because of his knee condition and continued in this status as of the CCH. Such evidence, found credible by the hearing officer, was sufficient to support his finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge