APPEAL NO. 931167

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly TEX. REV. CIV. STAT. ANN. Article 8308-1.01 *et seq*.). On November 18, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue to be decided was whether the claimant's low back condition was related to his compensable injury of (date of injury). The claimant had, on that date, been hit on the back of the head during a robbery of his employer, (employer), and received a head and neck injury.

The hearing officer determined that claimant had not proved that his low back condition was causally related to his compensable injury.

The claimant has appealed the decision. He argues that the reason he disagrees with the decision is that he has not been able to prove the relationship in large part because an MRI examination was not approved by the carrier. The claimant asks that his doctor be allowed to perform an MRI to determine the cause of his low back condition. The claimant indicated that he disagrees with one finding of fact and no conclusions of law. The carrier responds that the question of pre-authorization of certain medical procedures is beyond the capacity of the Appeals Panel to review. The carrier asks that the decision be affirmed, because no causal connection is demonstrated by the evidence, and notes that claimant's theory of recovery for his low back condition has changed.

DECISION

We affirm the hearing officer's decision.

Claimant was hit in the back of the head on (date of injury), during a robbery. Medical records indicate both that he lost consciousness and did not lose consciousness. In the months following the injury, claimant was treated for his head and cervical spinal area.

Claimant stated at the hearing that he had low back pain from the very beginning of his treatment for his work-related injury, but that it went away after bed rest. Later in his testimony, he indicated that the first time he mentioned his low back pain to his treating doctor, (Dr. M), was on the day that Dr. M released him to work, which was March 5, 1992, according to the work release in the record. He stated that prior to this date he had no problems with low back pain.

Claimant stated that he believed his low back pain developed due to physical therapy and traction for his cervical injury. He acknowledged that his position at the benefit review conference was that walking prescribed by his doctor led to his low back pain. He testified that he felt both contributed to his pain but that he believed it was actually caused by traction.

The claimant objects to admission of Dr. M's records into evidence because they failed to note his complaints of lower back pain.

A review of medical records of Dr. M does not note complaints of lumbar pain or treatment for the lower back. On September 19, 1991, a neurological examination found a normal lumbar spine and full range of motion. Effective March 16, 1992 (by work release dated March 5th), Dr. M released claimant to regular duty. Other medical records refer to claimant having had lumbar disc surgery in 1986. Claimant was treated by a psychologist, (Dr. P), Ph.D., during the course of his injury, apparently for counselling related to being a victim of crime. In a May 18, 1992, letter, Dr. P noted that claimant had begun to complain of pains and conditions not previously mentioned. Dr. P states, "I suspect that avoidance to return to work at this time is quite prominent."

Claimant changed treating doctors to (Dr. S), a neurosurgeon. Dr. S, in a March 23, 1992, letter, stated in one sentence that claimant "coincident with his neck pain . . . [began] . . . to experience recurrent lower back pain, for which he has been treated for several years." Dr. S speculates that further evaluation of the low back is advisable as it may have been aggravated by the assault. Dr. S performed a cervical laminectomy July 15, 1992. On July 27, 1992, Dr. S noted that claimant's lower extremity functions were unremarkable. Dr. S opined in 1993 that he felt claimant's assault "contributed to" his lower back problems.

Claimant was examined by (Dr. H) as a result of an agreement made at a benefit review conference. Dr. H completed a Report of Medical Evaluation (TWCC-69) stating that claimant reached maximum medical improvement (MMI) July 23, 1993, with a nine percent impairment attributable solely to the cervical spine. Dr. H noted in the history of his narrative report that claimant had no lower back pain until March 1992. Dr. H states that claimant had not lumbar problems related to his injury. He said, ". . . it is inconceivable to me that he would have symptoms occurring some nine months post injury and be attributable to that injury."

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). 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 Com, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). It was for the hearing officer, the trier of fact, to resolve the obvious inconsistencies and conflicts in the evidence. 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 (Tex. Civ. App.-Fort Worth 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).

The decision of the hearing officer is supported by sufficient evidence in the record, and is affirmed. The carrier's point that the Appeals Panel cannot review the medical necessity of the requested MRI is correct. We would note also that this case has been

pending for some time and there has been ample opportunity for claimant to develop evidence in support of his claim.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge