APPEAL NO. 980246
FILED MARCH 18, 1998

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 31, 1997, a contested case hearing was held in (City), Texas, with (hearing officer) presiding as hearing officer. The issues were whether the appellant, CC, who is the claimant, sustained a compensable injury on or about _____, and whether the employer was relieved of liability for the claim under Section 409.002 because the claimant failed to give timely notice to his employer of his injury not later than 30 days after it happened. The alleged injury in question was a hernia.

The hearing officer held that the claimant did not sustain a compensable injury on _____, nor did he give notice to his employer of such injury prior to April 1997. The hearing officer also held that there was no good cause for the failure to give timely notice.

The claimant has appealed, contending that he told his supervisor the day of the injury that he had been hurt. He argues he was hurt as he asserted. The respondent (carrier) responds by arguing that the hearing officer's factual determinations should not be set aside by the Appeals Panel.

DECISION

Affirmed.

Claimant worked in a pawn shop operated by (Employer). He was hired sometime about three weeks before his injury. The claimant could not recall the exact date of his injury other than to state that it occurred around _____. He said he was carrying a 32-inch television that was very heavy and that he felt like he "tore" a muscle when he did so. Claimant said he told the manager, Mr. W, who told him, "[d]on't do that to me!" and advised him to get assistance lifting such items in the future. Claimant said he would go back and rest in the break room during the day.

It was not disputed that the claimant continued to work until he quit his job the first week of February to go to a better paying job which fell through. The claimant said he did not go to a doctor until April 23, 1997. He said that he didn't seek treatment because he thought his pain would go away and that he could not afford to take time off. The claimant asserted that he actually went to the doctor after an incident in late January 1997 in which he was carrying a tile saw with another worker who dropped his end twice, causing pain in claimant's shoulder. This was the subject of another claim not before this hearing officer. Claimant said his hernia was diagnosed by Dr. M on April 23rd. He said that Dr. M (whose reports indicate that she was a chiropractor)

would not treat hernias, so he continued to treat it with over-the-counter pain medication and had not had surgery.

Claimant also asserted that he left his job with the employer because the work was "killing" him. He said he continually told both the assistant manager, Mr. C, and Mr. W about his pain.

A brief statement from Dr. M dated April 23, 1997, reported that it is her opinion that claimant's symptomatology is directly related to his on-the-job accident. Her diagnosis is inguinal hernia. A transcript of Mr. W's interview with the adjuster indicated that he knew nothing of the alleged hernia until sometime in April 1997 and that claimant had not previously contended he had an injury. Mr. W's statement indicated that claimant came around for a month asking for his old job back and saying he made a mistake by leaving, but that it had already been filled. He recalled that shortly before claimant left, he said in casual conversation that he had not been feeling well due to an episode in which he had been carrying a tile saw on January 26, 1997. A statement from Mr. C denied that he had been told about any injury.

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 Company, 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ). The hearing officer is the sole judge of the relevance, the 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). 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).

We cannot agree that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust, and therefore affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge