APPEAL NO. 990013

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 8, 1998, a contested case hearing (CCH) was held. The issues concerned whether the appellant, KT, who is the claimant, sustained a lumbar injury on _____, and had disability therefrom, and whether the employer made him a bona fide offer of employment.

The hearing officer held that claimant did not sustain a lumbar injury, as he contended, or have disability and that the employer had not made a bona fide offer of employment that was commensurate with his ability to work.

The claimant has appealed. He argues that the application he made for Supplemental Security Income (which the hearing officer considered a factor in his decision) was made in 1996, two years before the injury. He further argues that he was injured and had disability as a result. The respondent (carrier) responded that the conclusions of the hearing officer are supported by the record. There is no appeal of the determination that a job offer was not made that was within the claimant's physical capabilities.

DECISION

Affirmed.

The claimant said that he had earlier worked full time for the employer, (employer) for about one and one-half weeks prior to his contended injury on _____. Claimant said he had worked for the same company for a few weeks through a temporary services company. The claimant agreed he had a prior back injury and surgery in 1987, for which his medical benefits were exhausted as of 1992.

Claimant contended that on _____, after he carried two 50-pound boxes of copier paper up 25 steps at a customer's location, he felt numbness and tingling in his legs. When he reported his back pain to his employer, he was sent to a local emergency clinic. The clinic records of that date do report a history of lifting boxes and pain onset. They also record a diagnosis of back strain. On the other hand, clinic records from June 26, 1998, state that there is no history of accident.

The claimant said he had returned to see his back surgeon, Dr. H, in September 1997 because he was told to do so by the Texas Rehabilitation Commission. He also said that he applied for Social Security disability or SSI benefits, and indicated in his testimony that it was around this same time. The hearing officer questioned why he would have applied for this and claimant said it was because he was having trouble finding a job. The claimant denied that he would have told Dr. H he had persistent back pain radiating into his legs. However, the report from Dr. H dated September 16, 1997, records this, and further

noted at that time that claimant would have some restrictions on his ability to lift or perform several activities.

Claimant initially chose Dr. E as his treating doctor, was given a light-duty release, and then switched to Dr. B, who took him off work entirely. Claimant had not worked since July 7, 1998. He testified that he switched because Dr. E was not helping him but also stated that Dr. B's treatment and course of physical therapy had not improved him either. Claimant said that a recommended MRI was not performed because the carrier denied coverage of the injury.

A claimant's testimony alone may establish that an injury has occurred and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, 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). In this case, although the claimant's _____, medical records contain a history consistent with his contention of lifting boxes, the record from a year earlier also indicated continuing problems. Finally, although the claimant contends on appeal that he applied for SSI in 1996, this was not indicated in the record in which claimant's testimony linked his application with his visit in September 1997 to Dr. H. The hearing officer stated during the CCH that he felt this reflected claimant's belief that he had a substantial disability, and the claimant was not fully responsive to this concern of the hearing officer, maintaining again that he sought it because he was having trouble finding a job. 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). Because the hearing officer did not find that a compensable injury occurred, he found that any inability to work was related to something other than the asserted injury. He could believe this related to claimant's limitations existing since 1987. While the record here could support a different result, the great weight and preponderance of the evidence is not against the hearing officer's decision. Accordingly, we affirm the decision and order of the hearing officer.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Alan C. Ernst
Appeals Judge