APPEAL NO. 990146

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 29, 1998. The issues before the hearing officer involved whether the respondent, who is the claimant, sustained an injury that included his low back and teeth when he fell on _____. Also presented was the question of whether the claimant's injury caused the inability to obtain and retain employment equivalent to his preinjury wage (disability).

The hearing officer held that the claimant injured his teeth and low back (in addition to his head and neck) when he fell from a scaffold on _____, and that he had disability for the period from July 28, 1998, through the date of the CCH.

The appellant (carrier) appeals, arguing the evidence it believes refute the hearing officer's conclusions. The carrier argues that there was no "direct trauma" to the face or low back. The disability contention arises from the appeal of injury, with carrier arguing that claimant did not argue that he could not work due to a head and neck injury. The claimant responds that the claim of injury to the back and teeth is consistent with the mechanics of a 16-foot fall from a scaffold, and that the hearing officer's resolution of the evidence should not be disturbed on appeal.

DECISION

Affirmed.

The claimant was employed in the installation and dismantling of (employer), when he fell 16 feet from a scaffold and landed primarily on his head and neck. This occurred on _____. The claimant did not lose consciousness but was shaken up. He was air-flighted to a nearby emergency room, where lacerations to his head were repaired. The safety manager for the employer, Mr. HKS, apparently accompanied claimant to several of his subsequent appointments with Dr. H, a plastic surgeon who did a repair of claimant's laceration, which had been misaligned, and a neurologist whom he saw on referral, Dr. L. Mr. HKS contended that he "never heard" complaints relating to teeth or the lower back. He also contended that claimant lifted his two-year-old daughter into a car seat when he took her to a doctor's appointment. Mr. HKS also said that claimant moved his stove out from the wall when his dog got caught behind the stove. There was conflicting testimony over whether the claimant told Dr. H that his teeth and low back also were affected. Claimant said he did not feel pain in his teeth so much as notice that they were chipped or loose.

As the hearing officer points out in her decision, Dr. H's July 31, 1998, report records that claimant's teeth were jarred during his fall, and that he attempted to refer the claimant to a dentist by August 26, 1998, for damage to his teeth. This was in contradiction to the tenor of cross-examination questions posed to the claimant (the assumption being made in

such questions that there was no early complaint of dental problems) and with an October 8, 1998, letter from Dr. H, written after the claimant changed doctors.

Claimant changed his treatment on September 9, 1998, to a chiropractor, Dr. HB, who also testified at the CCH. Dr. HB opined that a low back injury would not necessarily manifest on an abnormal EMG, and that claimant's low back injury was consistent with a compression-type injury from the fall. The hearing officer's decision fully and completely details the results of claimant's doctor's examinations. Dr. L performed an EMG and it was unremarkable, and he stated that claimant was making good progress and could return to light-duty work. Mr. HKS stated that claimant "looked disappointed" when he heard this news.

Claimant was released to light duty and returned to work briefly on August 30, 1998, when he asked to go home due to headaches. He was taken back off work by Dr. H the following day. Dr. H released claimant on September 9, 1998 from a head laceration (the date when there was a scheduled appointment for which claimant did not appear). Dr. HB began treatment and stated that claimant was unable to work due to other aspects of his injury. It appears that throughout his treatment, the claimant complained of dizziness and lightheadedness.

Plainly, the conflicting evidence in this case was for the hearing officer to weigh and resolve. Noting the early reference to dental problems in Dr. H's records, the hearing officer could also draw upon common experience and logic to ascertain the likelihood of injury to teeth in a fall of this nature. Likewise, she could assess the contended lumbar injury along the same lines. 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). 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 accordingly affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Judy L. Stephens
Appeals Judge