APPEAL NO. 990294

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 28, 1999, a contested case hearing (CCH) was held. The issue concerned the scope of injury sustained on _____. The disputed regional areas of the body were the lumbar spine, the thoracic spine, the claimant's left knee, and his right elbow.

The hearing officer found that the claimant's injury involved his thoracic spine (along with undisputed injuries to his neck, shoulders, and right hand) but did not encompass his lumbar spine, left knee, or right elbow.

The claimant has appealed. The claimant argues that he did not fully understand the proceedings in English and was confused on concepts and questions used. He argues that the hearing officer's findings are so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. The respondent (carrier) responds by reciting the evidence that is in favor of the decision, and asks that it be affirmed.

DECISION

Affirmed.

The claimant was employed as a welder by (employer). He agreed that although he did not speak English, he understood some and his supervisor instructed him on the job in English. The claimant said that on _____ (all dates are 1998 unless otherwise indicated), as he pushed a large trash bin with three other workers, a 200-pound bar on top of the container fell against his back, and apparently struck his right hand, which was opened by the contact. Claimant said he recalled little about the precise details of the accident, and only realized his hand was involved when he saw the cut and the blood. He attempted to assist his coworker, who was struck in the head by the same bar.

Claimant said his legs felt numb and he had pain throughout his body. An ambulance was summoned, and claimant said, on direct testimony, that no one in the emergency crew spoke Spanish. On cross-examination, he agreed that ambulance workers spoke Spanish and he explained in Spanish what was painful. He also agreed that at the hospital emergency room (ER) where he was treated, intake workers spoke Spanish. Claimant was admitted to the hospital that day, had surgery on his hand, and was discharged on June 3rd.

To greatly summarize the evidence, the claimant was consistent in stating that he felt, and complained of, pain in his neck, shoulders, hand, and mid-back. He agreed when he changed his doctor from Dr. A to Dr. B, that he told Dr. B about pain in his neck, knee, shoulder, and mid-back, and "that's it." Claimant said he hurt his knee when he fell against some rails when struck by the bar.

The claimant also agreed that when examined by a doctor for the carrier, Dr. Z, that he told him about his low back but not about his left knee. Although released back to light-duty work in mid-July, the claimant contended he was not able to work. He denied that he transferred from Dr. A because he had been given a release by Dr. A.

At a couple of points during the CCH, the claimant's attorney, with the permission of the hearing officer, sought clarification from the translator about, for example, the understanding of the claimant about medical "tests." Further, after objecting to a series of leading questions about those tests, the carrier's attorney withdrew his objection in order to allow swifter and more expedient development of the evidence.

The ambulance records note the wound on claimant's hand, and his complaints of pain between his shoulder blades. He was put on a backboard with a cervical collar by the ambulance crew. The ER records reported a right hand injury and that claimant denied other injury. On June 8th, in his Initial Medical Report (TWCC-61), Dr. A reported a crush injury to the hand, a shoulder injury, and cervical segmental dysfunction. The attached narrative of the examination does not add any additional regions to these diagnoses. Dr. B, in his August 1st TWCC-61, added diagnoses of lumbar sprain and elbow pain. Although the physical therapy records show that some treatments were administered to claimant's entire spine, such as massage, the recorded complaints had to do with the neck and shoulder areas.

The claimant said that prior to _____, he never had any medical treatment or hospitalization for any reason. In a January 8, 1999, MRI, the claimant was reported to have an L5-S1 herniation with no impingement on the nerve roots, but a moderate degenerative condition at the same level did cause some stenosis and impingement of the nerve root.

The doctor who primarily attended to the claimant's hand was Dr. V. Dr. V discharged claimant to light duty on July 2nd. Dr. A discharged claimant to light duty also on July 7th. Dr. V stated that the claimant could return to full duty by July 31st. Claimant was terminated when he failed to report for light duty after being notified by the employer that it would be made available for him and that he should report for his work assignment.

On one hand, the additional injuries claimed by the claimant would not appear inconsistent with his description of the incident in question. However, the hearing officer could also consider what the claimant reported close to the time the injury occurred, and the fact that he spoke to persons in the ambulance crew and in the ER who also spoke Spanish. While it appears from the record that the claimant was not always precise in his articulation of the facts, his case may not have been enhanced by the fact that he said he could "not recall" fairly minor or uncontroverted facts such as when he undertook treatment by his various doctors or whether he was terminated by his employer. The hearing officer is the sole judge of the relevance, 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). In reviewing the record, we cannot agree that claimant's language comprehension, with the translator present and with efforts made to clear up any misunderstanding, was a factor in any omission of evidence, nor do we agree that the hearing officer's decision is not supported by sufficient evidence in the record. We accordingly affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge