APPEAL NO. 990339

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 February 8, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether she had the inability to obtain and retain employment equivalent to her preinjury wage (had disability) as a result of the compensable injury.

The hearing officer found that claimant did not sustain a compensable injury and that she did not have disability. As part of these findings, he also found that claimant did not have the inability to obtain and retain employment due to a compensable injury at any relevant time.

The claimant has appealed, on letterhead from her current treating doctor's clinic. She argues that the fact finding as to her alteration of an "off work" slip was a matter she admitted at the CCH and consequently should not have been given significance or held against her. She argues that the hearing officer should have given weight to her verbal discussions with her first treating doctor rather than statements made in the written reports which reflect a denial of a work-related injury. She asks that the decision be reversed in her favor. The respondent (carrier) responds that the fact findings of the hearing officer, as the sole judge of weight and credibility, should not be set aside. The carrier also recites the evidence in favor of the decision.

DECISION

Affirmed.

The claimant was employed by (employer). She contended that around 6:00 or 7:00 p.m. on _____ (all dates are 1998 unless otherwise indicated), she was working for an hour packing supplies in the shipping department and injured her back while lifting a 60-pound crate of parts. She said she felt a sharp pain but worked the rest of her shift plus overtime, and did the same the next day. She did not report her injury because she thought it was nothing more than routine aches and pains.

Claimant then said when the pain persisted, she assumed she might have a kidney infection and went to her family doctor, Dr. S, on September 1st, and was told by the doctor that she did not have an infection but had lumbar muscle spasms. The claimant said that Dr. S told her she had to have done this by doing "something different"; claimant said the event she could think of was the shipping department incident, which she discussed with Dr. S. She said Dr. S told her that was probably the cause. Claimant contended that statements to the contrary in Dr. S's first report, indicating that claimant denied a work-related accident, were inaccurate and did not reflect the discussion.

Claimant contended that she was told by Dr. S that she could have up to two weeks off at her discretion. The claimant said she decided to select the next day and told the nurse, who completed an off-work slip releasing claimant effective September 3rd. Claimant woke up the next day and said she could not return. Claimant said after she was unable to work for about a week, she altered the off-work slip to release her on the 8th. Her explanation was that she thought a new examination, for which she would be charged, would be required in order for her to have the date extended. However, she never called Dr. S's office to determine if this was true. She stated on cross-examination that her copayment would have been $10.00, with the rest paid by her health insurance.

Claimant went to Dr. K at the (medical clinic). She found out about this clinic on September 8th. Dr. K took her off work and prescribed therapy as a means of avoiding further damage. Claimant said her injury was described to her as "muscle spasms," although those exact words were not used on medical reports from the medical clinic.

Claimant said that the medical clinic was assisting her with her claim and had provided the representative who was present with her at the CCH. The claimant agreed that she had denied that she altered the off-work slip, but made the decision to tell the truth at the CCH when so advised by her representative. Claimant said that she reported her injury to her supervisor on September 2nd. She reported to another supervisor on the 8th (the day after Labor Day). Claimant said her last day of work was on September 8th, when she worked the day doing her regular job.

Dr. S's records of September 1st show that claimant was suspected of muscle spasm and complaining of back pain for two days but she denied any trauma to her back. The records of the medical clinic record back pain as history but the reports don't include a diagnostic impression. A September 14th x-ray noted some spurring at L4 and L5. The physical therapy initial report dated September 30th stated that claimant had a "somatic dysfunction" of the lumbar spine.

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). 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 Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge