APPEAL NO. 990345

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 28, 1998. The issues at the CCH were whether the appellant, who is the claimant, sustained a compensable injury on _____, whether he had the inability to obtain and retain employment equivalent to his preinjury wage (had disability) as a result of the compensable injury, whether he gave timely notice to his employer about his injury, and whether he made an election of remedies that would bar him from receiving income benefits.

The hearing officer found that there was no election of remedies. The hearing officer found that the alleged injury was timely reported to the employer. However, the hearing officer determined that the claimant did not sustain a compensable injury to his right knee, and therefore his inability to work did not amount to "disability."

The claimant has appealed the determinations that are against his claim. He contends he injured his knee as he claimed and could not work as a result. The respondent (carrier) responds by reciting evidence in favor of the hearing officer's decision, which it states should be affirmed.

DECISION

Affirmed.

The claimant was employed as a relief machine operator by (employer) for about 13 years at the time of his injury. He agreed that since July 1996 he had been treated by Dr. B for a right knee injury. Claimant said his right knee problems did not result from a compensable injury but that his knee had just started hurting. Prior to his claimed injury in issue here, he said that he tried to avoid using stairs because his knee would hurt. He was able to drive a forklift, however. There was considerable testimony concerning the nature of claimant's job duties; however, it was claimant's contention that he sustained a specific injury on _____, when he slipped on a wet concrete floor. He said his knee felt bruised and was hurting. This date was a Saturday, when claimant was working his normal shift. The next day his knee was swollen. He went to see Dr. B on April 21st and called his personnel manager that day to report his injury.

Claimant had arthroscopic surgery on July 28, 1998, to repair a patellar tendon and remove some bone chips. He had not worked since April 20th. He said he was released to light duty on November 30th and had contacted his employer, but had not been offered light duty. Asked about medical treatment of his knee prior to the _____ incident, claimant agreed that Dr. B had ordered an MRI and he was having burning pain two to three weeks prior to _____. He said he been taking pain medication after his alleged work injury but did not recall if he had taken any prior to that date. However, he indicated that he took anti-inflammatory medication prior to that date.

A letter from the employer's human resources manager, dated July 3, 1997, to an entity that appears to be a physical therapist, stated the employer's understanding that claimant's recent treatment resulted from a continuing problem from a knee injury that occurred at home in July 1996. The medical evidence from Dr. B's notes indicated that in March and April 1997, prior to his accident, the claimant was seeking treatment for increasing pain and discomfort, resulting in the April 14th MRI. The claimant had an MRI on April 14, 1997, which reported a tear in the patellar tendon. Dr. B's April 21st note stated that claimant reinjured his knee when he twisted it. A September 1997 MRI found the same type of tear, described as "chronic," but no meniscal tear. The evidence indicated that the claimant had initially claimed his _____ injury through his regular health insurance. Claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) for his injury sometime in September 1997, although the form was dated July 3, 1997.

Whether a claimed injury represents a new injury (including one through aggravation of a preexisting condition), or a continuation of another condition, is a matter of fact for the hearing officer to determine. 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). In this case, the hearing officer could consider the existence of MRIs prior to and after the claimed injury that show essentially the same condition, as well as the fact that the claimant was undergoing recent treatment in March and April 1997 for a July 1996 knee condition. Although a contrary inference could have been drawn in this case, we cannot agree that the hearing officer's resolution of the evidence is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. We affirm his decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge