APPEAL NO. 990381

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 27, 1999, a contested case hearing was held. The issue concerned the scope of injury sustained by the respondent (claimant), whether it involved his lumbar spine, as stated in the decision, and whether the compensable injury was a "producing cause" of his herniated lumbar disc.

The hearing officer found that when the claimant fell on the ground after hitting his head during his accident, that he sustained injury to his low back, herniating his disc at L5-S1.

The appellant (carrier) has appealed and essentially argues that because claimant did not immediately have or complain of back pain, the accident did not cause his herniated disc. The carrier argues that the hearing officer "obviously ignored" medical evidence to the contrary. The carrier states that having a herniated disc 11 months after the initial injury does not create a causal connection. The carrier states that the decision is against the great weight and preponderance of the evidence. The claimant responds that the hearing officer's resolution of any conflicting medical evidence is supportable.

DECISION

Affirmed.

We would note at the outset that while chronology alone does not establish a causal connection between an accident and a later diagnosed injury, Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994, neither does a delayed manifestation, or the failure to immediately mention injury to a health care provider, necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). Moreover, when a carrier denies objective testing early on, a hearing officer cannot be faulted for giving less credence to its protestations that there is no objective evidence early on that establishes a causal connection. 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). The trier of fact is entitled to weigh conditions diagnosed when deferred testing is eventually done, and draw inferences from other evidence that the condition existed earlier and as a result of a work-related accident.

Claimant was employed as night shift supervisor for (employer) on _____. He stated that, as he was lifting steel pallets with stacks of heavy glass panes with a forklift, he left the forklift to move a rope that was in his path. Claimant said the step up into the forklift cab was two to three feet off the ground. As he pulled himself up into the cab after moving

the rope, the claimant struck the crown of his head on the "rollover" cab portion of the forklift. Claimant said the next he knew, he was sitting on the ground, holding his painful head. He returned briefly to work, but then asked permission to go to the emergency room (ER), which was granted.

At the ER, x-rays were taken of his head and back. His primary complaints were head and neck and upper back pain. The claimant said he asked to return to work, although advised to go home, because he had supervisory responsibility. Claimant said his lower back began to hurt him three to four days after the accident. He said he worked in pain the next few weeks and could not lift panes of glass as he had been doing before. Claimant's next medical treatment was a few months later. He said that he asked his supervisor about seeing a company doctor, Dr. W, and was able to get an appointment with this doctor on January 23, 1998. Dr. W noted that claimant had persistent pain in his neck and shoulder with occasional tingling in his hands when he turned his head. He also complained of posterior right thigh and calf pain since the injury. Dr. W found tenderness in the cervical and thoracic spine but not in the lumbar spine. There was a "weakly positive" straight leg raising on the left in the sitting position. Dr. W diagnosed a cervical sprain. Claimant had two weeks of physical therapy without much relief. When claimant saw Dr. W a third time, on February 20, 1998, he complained of right leg pain along with cervical pain. Dr. W added a diagnosis of internal derangement of the right knee to the cervical problems.

Claimant changed his treating doctor to Dr. G, whom he saw on April 3, 1998. Dr. G found that claimant had radiating thoracic spine pain and right posterior leg pain. He recommended an MRI of the thoracic and lumbar regions. Dr. G kept the claimant off work. The MRI approval was denied because the carrier disputed injuries to the areas beyond the neck.

Claimant was examined by Dr. R, a doctor for the carrier, on June 11, 1998. Dr. R noted that claimant had had a lumbar strain on October 23, 1996. (Claimant agreed he had but that this was resolved.) Dr. R stated that claimant first had lower back pain after this current injury within three or four weeks (not days, as claimant stated). A peer review report from a carrier's doctor concludes that there is no causal relationship between the contended lumbar and knee injuries, and bases this almost solely on the lack of early documentation of pain in these areas. Dr. R agreed that claimant had an injury to his thoracic spine as part of his accident, but disagreed with the leg and lumbar injuries due to the "temporal gap" of three to four weeks in onset. Dr. R doubted that claimant had a surgical lesion, and that claimant had likely reached maximum medical improvement (MMI).

Dr. G stated, in an August 1998 letter, that when claimant banged his head he experienced an "axial load" that could have resulted in thoracic and lumbar injuries. On September 11, 1998, Dr. G noted that claimant was also seen by Dr. O, who concurred in the need for diagnostic studies and disagreed that claimant was at MMI. The MRI conducted on October 5, 1998, reported a bulge at L4-5 and a large para-central herniated disc at L5-S1 with significant impingement on the spinal cord, and a protrusion also in the

thoracic spine at T6-7 and bulging at the next lower level. No significant impingement was noted as a result of the thoracic conditions.

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 this case, there is sufficient evidence to support an injury, the basis for which does not appear illiogical from the mechanics described by the claimant nor explained by any other occurrence in the evidence that the hearing officer could have chosen instead to believe. We accordingly affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

CONCUR IN THE RESULT:

_____
Philip F. O'Neill
Appeals Judge