APPEAL NO. 990431

CCH were whether the appellant, who is the 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 the condition that she claimed as her injury.

The claimant has appealed and argues that it is obvious that the hearing officer simply ignored the medical evidence that he did not summarize. She states that there was error in the statement in the decision's summary of evidence that she did not seek medical attention for her injury between November 23, 1998, and February 2, 1999, the day prior to the CCH. The claimant argues that the hearing officer abused his discretion in making the findings that he did. The respondent (carrier) responds that the decision is sufficiently supported by the evidence. The carrier responds that the hearing officer's decision is sufficiently supported and that the fact that a medical report was dated in the time period that the hearing officer found no medical treatment was sought did not mean that medical treatment was rendered on that day.

DECISION

Affirmed.

The claimant contended she was injured on her first day working at a day care center operated by (employer), on _____. She said she was pulling a wagonload of kids up an incline. The claimant said that she finished out the day and told a coworker, who she "assumed" heard her, that her back hurt. Claimant called in the next day and agreed that she "might have" told the woman who answered the phone that she felt sick and wasn't coming in, as opposed to having been injured and not coming in. While the claimant contended that her low back was hurt, she allowed as how she "might" have told the adjuster that it was her mid back that was hurt.

After several questions about earlier compensable injuries in 1973, 1976, and 1996, for which her recollection was refreshed as to her earlier injuries, claimant agreed that it would be fair to say that she had had mid and low back problems since 1973. Claimant denied that she had any medical treatment for her back from March 1997 (the last treatment for her 1996 back injury) until the date of her injury. On cross-examination, she then said she "didn't think so" and in any case could not recall whether she had been treated, before affirming once more that she had not. Claimant said that the maximum medical improvement (MMI) certification she was given in April 1997, with a two percent impairment rating (IR), was something the insurance company did on its own and with which she did not agree. It was claimant's assessment that she was likely not fully healed

from the effects of her 1996 injury until "maybe" early 1998. She worked out of her own home, doing day care without assistance, until sometime in August 1998.

Claimant first went to see Dr. T on November 23, 1998. Dr. T found that claimant had some right-sided back pain. He prescribed physical therapy for the next four weeks. Only one physical therapy report, dated November 24th, is in evidence, however. Claimant testified that she had about 10 days worth and then she wasn't able to do this. The claimant said she was still "continuing to treat" with Dr. T and had an appointment with him later on the day of the CCH. On November 18, 1998, the claimant filled out an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) and stated her account of the accident as follows: "pulling a wagon with children in it (I think)." The claimant said that she couldn't think of anything else she was doing that could have caused her back pain.

Records from her 1996 injury indicate ongoing arthritis treatment and pain ranging over the thoracic and lumbar spines. Claimant was found to have a compression defect at T9. Dr. S, who examined the claimant on January 29, 1999, in an independent medical examination, found that claimant had a zero percent IR and had reached MMI. He noted that she had high blood pressure, poorly controlled.

The statement given to the adjuster, Ms. K, was something that the claimant said she felt was "forced" on her. She said she was being medicated at the time and was not asked to read the statement for accuracy. In the statement, claimant was imprecise about what doctors she had been treated by before and she refused to disclose one name, saying she had been dissatisfied with that doctor's treatment. She would not discuss her previous workers' compensation claim, saying she had lost her job because of it. She told Ms. K she could not point to one particular thing that caused an injury to her back on _____. The claimant told Ms. K that she had not worked in two years, except to watch some grandchildren in her home. At the CCH, claimant said she meant that she had not worked for anyone outside her home for two years.

With the evidence in this posture, the hearing officer obviously concluded that while claimant may have awakened on (day after the date of injury), with back pain, the evidence was insufficient to link this to work as the cause. We cannot agree that this finding was against the great weight and preponderance of the evidence, nor do we agree that the hearing officer necessarily did not review the medical evidence in order to arrive at this decision.

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). Claimant's credibility may not have been enhanced by frequent contentions on cross-examination that she "did not recall" matters concerning prior compensable injuries or what she may have told her employer about the reasons for not reporting to work, for example. There was also evidence of ambiguity, early after the claimed injury, when she was asked to tell where she injured herself. The hearing officer may have concluded from common experience that a great many of these matters would have been recalled at the CCH to some extent or that she would have been able to be more specific right after the contended accident about what happened and where she was injured. As we do not agree that the decision is against the great weight and preponderance of the evidence, we affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Alan C. Ernst
Appeals Judge