APPEAL NO. 990515

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 12, 1999, a contested case hearing (CCH) was held. With regard to the issues before her, the hearing officer determined that the compensable (right shoulder) injury does not extend to the low back and that appellant (claimant) had disability due to the compensable right shoulder injury, from May 20, 1998, and continuing through the date of the CCH.

Claimant appealed the adverse findings on extent of injury, referencing medical reports which support her position, alleging "a separate back injury." Claimant contends that the hearing officer "abused her discretion" and that the hearing officer "only selectively discussed" some of claimant's supportive evidence. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The (School), referred to as the self-insured, urges affirmance of the hearing officer's decision as being supported by the evidence.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable (right shoulder) injury on _____, and the self-insured has accepted liability for the right shoulder injury. At issue is whether the injury or incident of _____ extended to the low back. Although there was some discussion regarding reporting of the low back injury and when the self-insured contested compensability of the low back, those were not issues before the hearing officer and the hearing officer correctly did not make findings on those matters.

Claimant was employed as a "service assistant" at the self-insured's school with general duties of helping clients with their personal hygiene and cleaning the facility. Claimant testified that on _____, she was called to an area where two clients were fighting and one of the clients pushed claimant or slammed a door into her right shoulder. Claimant testified that she was pinned by the door and injured her low back attempting to get out from behind the door. Claimant testified that her initial concern was her right shoulder injury and that she did not notice her back until "a few weeks later," when she began experiencing sharp pain in her knee and back. Claimant continued working after _____ until May 18, 1998, when, claimant said, she had to stop work because of pain in her shoulder and low back.

Claimant testified that she first sought treatment with Dr. S. The first medical report from Dr. S in evidence is in June 1998; however claimant testified that Dr. S referred her to Dr. B, who in a report dictated on December 30, 1997, noted complaints of "discomfort to her left knee" "about 3 months ago." Dr. B noted no knee abnormalities and had an impression that claimant "has sciatica" which would benefit from epidural steroid injections. This report states "no history of trauma to the knee" and there is no mention (at that time)

of the _____ door/right shoulder incident. A handwritten nurse's note dated January 13, 1998, at the bottom of the report states that claimant called that day stating that "she was injured "@ work 2 ½ months ago (no specific date given) when a door was slammed on her shoulder." (Emphasis in the original.)

An MRI performed on May 16, 1998, was unremarkable other than mild dessication and a "moderate annular bulge" at L4-5. Claimant apparently continued treatment with Dr. S, who at some time in June 1998 prescribed physical therapy. In a June 3, 1998, handwritten note Dr. S states:

> Injury to [right] shoulder–hit by door @ work. Patient claims low back pain since injury. MRI no lesion. Unable to lift secondary to pain. Beginning Pt off work 4 wks (illegible) to pain. Questionable bulge of L4.

In a report dated July 2, 1998, Dr. S recites the history of the _____, incident, notes a referral to a psychiatrist and comments that claimant's "complaints are somewhat difficult to all justify on the basis of injury to her shoulder." In a report dated July 27, 1998, Dr. S noted a referral to Dr. EB, who in a report of July 7th notes the _____ incident, consultation with Dr. B, the MRI and rehabilitation efforts. Dr. EB's examination indicates positive Waddell signs, and "signs of symptom magnification in presentation." In another report dated July 21, 1998, Dr. EB writes:

> The patient has had a rather protracted recovery from her work injury. She has had three epidural steroid injections. She has had a MRI scan revealing no focal disc herniation. She has progressed through active therapy for the past six weeks. She has a MRI scan, which I have reviewed and is essentially normal. We do not believe she should progress onto work conditioning exercises. She will work with both lumbar and right shoulder complaints.

Claimant was apparently referred to Dr. D for evaluation. In a report dated November 11, 1998, Dr. D wrote:

> [Claimant] states her back and neck began hurting after a _____ work injury. By her account, her mechanism of injury at the time of injury and her history sincer [sic] her spinal complaints arose out of the _____ injury.

The appealed findings were:

FINDING OF FACT

2. Claimant did not injure her low back during the course and scope of her employment on _____.

CONCLUSION OF LAW

3. Claimant's compensable injury does not extend to an injury to the low back.

Claimant contends that her testimony is "uncontradicted" and points to the report of Dr. B (December 30, 1997) which refers to sciatica and the May 1998 MRI as establishing a compensable back injury. Unexplained was claimant's status between _____ and December 30, 1997, when claimant continued to work with no evidence (other than claimant's testimony) of back complaints or treatment.

Our standard of review where the sufficiency of the evidence is appealed is whether the hearing officer's decision was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust rather than abuse of discretion. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Further, claimant complains that the hearing officer did not recite all the evidence, only that which was "arguably strongest to justify her determination against claimant." We note that Section 410.168 only requires the hearing officer to issue a written decision to include findings of fact and conclusions of law and a determination of whether benefits are due. The Statement of the Evidence/discussion allows the parties and/or reviewer to determine what the hearing officer believed to be important and the basis of his or her decision. We have frequently noted Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Further, while it is true that issues of injury and disability in workers' compensation cases may be established by the testimony of the claimant alone, if believed, Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.), the testimony of the claimant, as an interested party, only raises issues of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Claimant also appears to contend that Dr. D's November 11, 1998, report should have been given greater weight, but that report expressly relies on claimant's account of how she was injured and we have held that a fact finder is not bound by the testimony of a medical witness when the credibility of the testimony is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). Dr. D's comment relies entirely on claimant's account of how she was injured. We find the hearing officer's decision to be supported by sufficient evidence.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, *supra*. We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge