APPEAL NO. 990727

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 19, 1999, a contested case hearing (CCH) was held. The issues concerned whether the respondent (claimant), had been injured in the course and scope of employment with appellant, (employer and self-insured carrier), and whether he had disability resulting from his injury.

The hearing officer determined that the claimant sustained an injury to his neck, back, and right shoulder when he slipped and fell at work on _____. She rejected the self-insured's contention that claimant staged his accident. She found that the claimant had disability from April 23 through September 1, 1996.

The self-insured has appealed. The self-insured asserts that the decision is against the great weight and preponderance of the evidence, which it maintains indicates that the accident never happened as stated by the claimant. The self-insured also says that the evidence does not support any disability. There is no response from the claimant.

DECISION

Affirmed.

At the time of the CCH, the claimant was 66 years old. He had worked for the employer for 22 years. Claimant operated various presses. He said that on _____, as he walked in the area around the machines to empty some scrap, he slipped on some wet substance on the floor and fell back. Claimant did not think he hit his back, but he said he did think he hit his shoulder and neck on an air tank behind him. Claimant had made a sketch of the area as he recalled it; many questions were asked on cross-examination and through examination of his supervisor as to the accuracy of the sketch.

Claimant was removed from the area by stretcher and taken to the hospital where he was kept until the afternoon. The claimant was evaluated and treated for shoulder and low back strains and contusions. Vicodin was prescribed. Claimant said he was subsequently treated by his own doctor, Dr. R, and first began losing time from work on April 23, 1996. In August 1996, a letter from Dr. R indicated his belief that the claimant had also sustained a concussion.

The claimant said he had been involved in a motor vehicle accident in January 1996, in which a trailer he was pulling with his pickup truck was rear-ended and pushed into the side of his truck (he was turning at the time). He said he hurt his neck and both shoulders and was treated by Dr. R, but was fully released from that accident in late March 1996.

Claimant's supervisor, Mr. M, testified at the CCH. In addition, a recorded statement Mr. M gave the adjuster on April 15, 1996, is in the record. In the recorded statement Mr. M said he first became aware of the injury the day it happened because coworkers were

yelling that the claimant was "down." He agreed that claimant had been carrying scrap metal to a "hopper" to dump; Mr. M said that when the hopper was moved in order to assist the claimant, there was water under the hopper. Mr. M opined that none of the water was exposed. He opined that claimant had financial problems because he had expressed the idea that if he could "come up with" $30,000.00 he could retire. Mr. M said that claimant contended he had struck an air cylinder but that the top of the cylinder was still dusty. This observation was also reported in an inter-office memo by Mr. G. A medical record dated April 15th observes that the claimant was feeling excessively drowsy at work and it was recommended that he discontinue his Daypro and use Tylenol instead.

Mr. M's testimony was similar to his statement. He explained more how claimant was lying, stating that he was behind the hopper, not quite parallel to the air cylinder. Mr. M agreed there was water on the floor but "no way to get to it." Mr. M agreed that the hopper was moved after the accident to a considerable distance away. He asserted the hopper was restored to its place before he had pictures taken of the area, which are in evidence.

Claimant said he had not gone to sleep before the accident. He said that the area was very noisy so it would not be surprising if no one heard him fall. The claimant said that while he was sure that someone would have seen the accident, they would not come forward for fear of retaliation.

A letter from Dr. C, a psychiatrist who treated claimant prior to his injury, noted that claimant had been drowsy at work, that he was taking other medication for bipolar episode, and that he should be restricted from operating a punch press. Claimant agreed that he was moved to another machine.

On April 22nd, claimant said he had a meeting with Mr. M concerning a concern that he was falling asleep while operating the press machine. He said that Mr. M dealt with the problem by telling him he had to work right in front of him or he could take a long-term disability leave. Claimant completed a medical disability statement on April 29, 1996, apparently for regular disability, although the account of the injury detailed the slip and fall he had at work.

Recorded but unsigned statements were submitted from Ms. MY, Mr. S, Mr. MN, and Mr. F. Ms. MY first saw claimant lying on the floor on _____, although she did not witness a fall. She said there were splashes of water about 12 inches from where claimant's feet were. Ms. MY asserted that she happened to look at the bottom of claimant's boots and there was no water on them. She observed that during a workday claimant would fall asleep at his machine two or three times a day and make several trips back and forth to the drinking fountain.

Mr. S said that he saw no metal on the ground and disputed that claimant could fit into the area where he fell without intentionally squeezing in there. Mr. S watched from five yards away. Mr. S said claimant did not appear to be in pain. Mr. MN said he was the first

to see claimant on the ground, although he did not see him fall. He thought claimant had had a heart attack. Claimant was between the hopper and the machine. Mr. MN said that in that area the water area was very small. Mr. F said that when he came to the claimant lying on the ground, claimant was lying in an awkward position with his legs kind of twisted around the hopper.

Claimant eventually changed doctors to Dr. B, and said he did so because Dr. R did not handle workers' compensation, although he was unable to answer why Dr. R treated claimant for several months after the injury. It was not clear exactly when he began treating with Dr. B; Dr. B's notes in evidence begin in December 1997. Claimant returned to work on September 1, 1996, pursuant to Dr. R's release.

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). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. There were conflicts that were her responsibility to weigh. The hearing officer expressly stated that she found claimant credible and did not find Mr. M credible in his assertion that the accident was staged. She evidently concluded that the statement claimant reportedly made about $30,000.00 fell more in the zone of the type of remark that would not uncommonly be made by employees day to day as opposed to indicative of financial penury. She clearly was not persuaded from anything other than this reported remark that claimant would have had a motive to stage the accident. The considerable argument about the dimension in claimant's drawing and his recollection of comparative distances was for the trier of fact to weigh, in light of testimony that the hopper was moved after the accident. The period of disability found by the hearing officer is likewise sufficiently supported by the evidence.

We do not agree that the great weight and preponderance of the evidence is against the hearing officer's decision, and affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Thomas A. Knapp
Appeals Judge