APPEAL NO. 991108

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 30, 1999, a contested case hearing (CCH) was held. The issues concerned whether the respondent (claimant) sustained a compensable injury on _____, and whether she had disability resulting from the injury beginning on November 11, 1998.

The hearing officer determined that the claimant injured her left arm and shoulder when she reached for a dropping bundle of clothes on _____, and that she had disability beginning the next day and continuing to the date of the CCH.

The appellant (self-insured) employer has filed an appeal, contending that the claimant's testimony and evidence preponderate against a finding that she was injured on _____, as she claimed. The self-insured points out that the medical evidence shows that she complained of shoulder pain at a point in time that would have preceded the alleged injury. The self-insured asserts that it was error to accord the claimant's testimony with any credibility when the objective medical records refuted it. The claimant responds that the testimony and evidence sufficiently support the hearing officer's decision.

DECISION

Although different inferences could have been drawn, the decision is affirmed as not reversible under our standard of review.

The claimant was employed as a seamstress by the self-insured. She testified that on _____, a bundle of pants fell to her left and she reached out with her left arm to grab it. She used both arms to attempt to pick it up. The claimant said she felt left shoulder pain, but thought it was not much and finished her shift. That night, she experienced increasing pain that interfered with her sleep. She called her foreman at work the next day to report that she was going to the doctor for shoulder pain. The claimant agreed she did not report her injury on either November 10th or 11th as relating to her work.

The claimant denied she had shoulder pain at all prior to _____, and explained medical records from the emergency care clinic on November 11, 1998, which record a two-week history of shoulder pain, as mistaken understanding of her statement, brought about in part by language barriers. However, the claimant agreed that she could understand English fairly well.

The emergency care clinic records plainly state that she reported left shoulder and arm pain for two weeks, along with swelling. Although she stated that she reported the incident at work, this is not recorded. X-rays were made of her left shoulder and cervical spine. The claimant began treatment through Dr. A on November 13, 1998, and he diagnosed a rotator cuff tear and impingement. The claimant began treatment through Dr. M, a chiropractor, on December 22, 1998. He agreed with Dr. A's opinion that surgery

would be required. As of the date of the CCH, the claimant had not returned to work and there are "off-work" slips in the record for much of the time period.

The self-insured presented 1997 medical records showing that the claimant had been treated at another medical center in January and August for symptoms that included shoulder and arm pain. The August 1997 record appears to note (the handwriting is not clear and was not deciphered) that the claimant had a right shoulder impingement. The claimant's testimonial explanation was that she was being treated for her neck and did not know why the shoulders would be noted. On August 21, 1998, the claimant was treated by the emergency care clinic for chest pain, syncope, numbness, and tingling. The impression was that the claimant was probably experiencing anxiety.

We have consistently stated the proposition that a claimant's testimony alone may establish that an injury has occurred and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). 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). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. The fact that the claimant may have had shoulder pain the year before does not preclude the hearing officer from believing that the November 10th injury occurred. While it may be that there were inconsistencies to resolve, the state of the record is not such that a decision against the claimant was compelled, although plainly another finder of fact could have drawn inferences that the claimant had experienced the continuation of prior shoulder problems. However, 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:

_____
Thomas A. Knapp
Appeals Judge

_____
Alan C. Ernst
Appeals Judge