APPEAL NO. 991119

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 21, 1999, a contested case hearing was held. The issues concerned whether the respondent, who is the claimant, had post-traumatic stress disorder (PTSD) and situational depression that was causally related to his compensable injury of _____, and whether the appellant (carrier) waived its right to dispute the compensability of the psychological conditions.

The hearing officer determined that the claimant sustained situational depression as the result of his back injury and that the carrier had timely disputed this. She held that claimant did not establish that he had PTSD.

The carrier had appealed the determination regarding situational depression, arguing that the claimant failed to prove that his compensable back injury was the producing cause of his depression. The carrier asserts that the medical evidence is insufficient and the decision in claimant's favor is against the great weight and preponderance of the evidence and stems from problems other than the injury. The claimant responds that this is not so, and that his back injury directly led to his depression.

DECISION

Affirmed.

The claimant worked for a mobile home retailer, (employer) and said this entailed doing minor repair work as well as moving furniture in and out of homes that were displayed for sale. He said that on _____, as he was moving a washing machine out of a mobile home down some steps, he felt a sudden pain in his low back and could not move. He was treated in the emergency room. Since that time, he has become frustrated with his inability to do physical things and his dependence upon others. He had become short-tempered and irritable with his family, which he denied existed before, and suffered from insomnia. The claimant said he had never been previously treated for psychological problems. Claimant said that early on in the course of his claim, he was prescribed Paxil (paid for by the carrier) to assist him in coping with his depression and mood problems. The claimant was 57 years old at the time of his injury. The doctor who initially treated him was Dr. F.

Medical records indicated that Paxil was prescribed initially on September 22, 1998, along with pain medication for claimant's back. An MRI of the back done on August 29th showed advanced degenerative conditions at L2-3 and L3-4 and a small protrusion at L4-5, with no evidence of central canal stenosis. The claimant was returned to work on a light-duty, restricted basis effective August 24th, but he was taken entirely off work the next week. Dr. F referred the claimant to Dr. D for electrodiagnostic consultation. No radiculopathy or peripheral neuropathy was found. Claimant was then seen by Dr. T, who stated that he had severe degenerative conditions in his spine, with superimposed trauma

and suspicious indications of nerve root impingement. Dr. T also renewed his prescription for Paxil.

By November 1998 claimant was being assessed (after a myelogram) as a candidate for lumbar decompression; the doctor making this assessment, Dr. L, recommended steroid injections. Claimant said these did not afford any relief to him.

The claimant changed his treating doctor to Dr. G in early December 1998; he also hired an attorney at the same time (although he subsequently discharged the attorney). The claimant identified this point as the time when dealings with the adjuster became more contentious and medical treatment denials started occurring. Dr. G wrote a "To Whom It May Concern" letter to justify continuation of Paxil prescriptions because of the depression the claimant had in connection with the back injury and prospect of surgery. This apparently was the only record from Dr. G the carrier did not have.

The claimant was examined on February 4, 1999, by Dr. C in a required medical examination (RME) sought by the carrier. Dr. C agreed that the claimant had some depression. Dr. C found the situation with the claimant's back somewhat confusing; however, he agreed that the claimant should have psychiatric counseling. Dr. G concurred in this recommendation. Dr. G appears to agree that the claimant is ultimately a surgical candidate, a prospect that the claimant testified frightened him because he was unsure how the surgery would leave him. He said that referral to a psychiatrist had been denied by the carrier.

We do not agree that the record contains "no" medical evidence supporting the causal connection between the claimant's back injury, resulting pain, and his depression. Part of the evidence in favor of the causal connection came from the RME doctor. There was no evidence of any preexisting psychological problems. The hearing officer, as the trier of fact and sole judge of the weight and credibility of the evidence, could choose to conclude from the full range of testimonial and medical evidence that the claimant had depression as a part of and result of his compensable injury. Whether or not considered a discrete injury, treatment for ancillary depression would appear to be covered as health care that "cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment." Section 408.021(a).

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). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). 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).

We affirm the decision and order, finding sufficient support for same in the record.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Alan C. Ernst
Appeals Judge