APPEAL NO. 991142

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 7, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury and, if so, is it a producing cause of a diagnosed left lateral disc herniation. The hearing officer determined that the claimant did sustain a compensable injury on _____, and that it was a producing cause of his L4-5 disc herniation. The appellant (carrier) appeals, urging that the underlying findings of fact made by the hearing officer are supported by no evidence or in the alternative, are against the great weight and preponderance of the evidence, and asks that the decision be reversed. The claimant responds, in essence, that there is sufficient evidence to support the findings of fact and the decision made, and asks for affirmance.

DECISION

Affirmed.

Claimant, a well site engineer with employer, testified that on _____, while acidizing a plant and standing on a 4-inch divider, a pipe was being lowered which pushed him, causing him to fall on the divider and hit his tailbone. He felt immediate pain and was somewhat dazed but got up, indicated he was alright, and continued working (notice of an injury was not an issue). He states that his back bothered him for the next several days but he thought it would get better; he did not complain to anyone about his back. He states that when he continued to have problems, he talked to a doctor friend who indicated there was not much that could be done for the condition. He states that his back bothered him most when he sat for a long period, as in driving or riding in a truck, and that when he was changed to duty requiring more office work and sitting, he continued to experience some pain but not to a degree causing him not to work. No claim was filed and apparently no report of injury was ever made. Due to low oil prices, the employer had a big cutback and on September 16, 1998, his job ended. Because of the continuing symptoms he had been having with his back, he felt that he needed to have his back checked out for any potential future problems and so informed the employer. Claimant states, and records show, that he had a pre-employment physical, including a spinal x-ray, in January 1996, which was negative and that he had never had any accident or incident after the _____, incident that caused any injury to his back.

An MRI was performed on the claimant on November 19, 1998, which showed a left lateral herniation at L4-5, and an otherwise normal lumbar MRI. Based on claimant's history, his doctor felt the injury was related to the fall of _____. Although the doctor acknowledges that there "is no way to prove this one way or another," he checked "yes" to a question concerning whether he felt in reasonable medical probability that the herniation is a result of the _____, injury. A required medical examination by a carrier doctor in February 1999 resulted in that doctor's opinion that the current complaint is not "temporally

and causally related to his injury of _____," and that his discomfort is related to prolonged sitting which appears to be of greater consequence than the actual injury.

Based upon this conflicting evidence, the hearing officer found that the claimant injured his low back in the course and scope of his employment on _____, and that it caused a herniation at L4-5. Clearly, inferences, particularly considering the length of time involved, different from those found most reasonable by the hearing officer find support in the evidence. However, this is not itself a sufficient basis to reverse or set aside findings of fact by a fact finder where there is sufficient evidence to support the findings. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 990229, decided March 19, 1999. It is apparent that the claimant was found credible by the hearing officer in his testimony concerning his preinjury condition, the incident of _____, and the sequella of his condition and symptoms over the next two years. The hearing officer could believe the claimant (Texas Employers' Insurance Association v. Thompson, 610 S.W.2d 208 (Tex. Civ. App.-Houston [1st Dist.] 1980, writ ref'd n.r.e.)) and, together with the MRI report and the opinions expressed by his doctor who partially relied on that same history as testified to by the claimant, find that a compensable injury had been sustained and that it was a producing cause of the herniation. That a different medical opinion was expressed was a matter for the hearing officer to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). From our review of the evidence, we cannot conclude that the findings and decision of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, our standard of review. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge