APPEAL NO. 991291

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 12, 1999, a contested case hearing was held. The issues concerned whether the appellant, who is the claimant, had the inability to obtain and retain employment equivalent to her preinjury wage because of a compensable injury (had disability), and whether the Texas Workers' Compensation Commission (Commission) abused its discretion by denying a change of treating doctor to Dr. N.

The hearing officer determined that the claimant had disability for the periods from April 15 until July 19, 1998, and from August 31 to September 13, 1998. He further held that the Commission had not abused its discretion in denying a change of treating doctor to Dr. N because the change was sought by the claimant to obtain another medical report taking her off work and to seek a different impairment rating (IR).

The claimant has appealed. She argues that she has been seeing Dr. N on referral from her treating doctor, Dr. B, and that Dr. N and a doctor whom he referred her to, Dr. R, have taken her off work for further physical therapy (PT). She disputes the hearing officer's findings as to her motivation for seeking a change of treating doctor, and argues that a change may be allowed if she is not receiving appropriate care or has a conflict with the treating doctor that jeopardizes the patient/doctor relationship. The respondent (self-insured) responds that the hearing officer's decision is correct and recites facts which support that decision.

DECISION

Affirmed.

Although the self-insured refers in its brief to the injury as being "alleged," there was no dispute that the claimant was involved in a motor vehicle accident while driving a semi-trailer truck for (employer). She said that she strained her spine in this _____, accident.

The claimant lived in (City 1), but sought treatment at first from Dr. N, who was her family doctor. However, the claimant said that Dr. N was in (City 2), and she therefore sought treatment from a doctor she located in the telephone book, Dr. W. The drive to Dr. W's office was 97 miles round trip. When Dr. W referred her to PT but would not authorize treatment by a clinic closer to her home, the claimant changed her treating doctor to Dr. B.

The claimant received treatment from Dr. B and was released to light-duty work. She resumed truck driving in tandem with her husband and worked from July 20 through August 27, 1998. According to the claimant, she became dissatisfied with Dr. B's treatment because he kept telling her in August that there was nothing more he could do for her and

she would have to live with the pain. She said she resumed treatment with Dr. N on referral from Dr. B at her request. She agreed that she was upset at the end of August with Dr. B for certifying her at maximum medical improvement (MMI).

The claimant saw Dr. N in August to be recertified for truck driving in accordance with Department of Transportation regulations. She said that Dr. N would have been constrained from saying she could not drive because she was actually back at work at the time. She asserted that her pain in her spine during his examination was "obvious." The evidence indicated that Dr. N recertified the claimant for a two-year period ending August 17, 2000. The claimant was also examined by a doctor for the self-insured, Dr. D, on June 16, 1998, and again in March 1999. Dr. D recommended further PT and stated that her problems were mostly due to muscle stiffness.

A cervical MRI dated June 1, 1998, reported a small herniation at C5-6 that could be pressing on the cord. There was also a bulge at C4-5. A lumbar MRI of that same date reported a protrusion at L5-S1 and there appeared to the examiner to be a small mass in the lumbar spine as well, which he recommended should be evaluated further. A June 10, 1998, letter from Dr. B, for the most part rendered illegible by dark markings left by the photocopying of highlighted paragraphs, appears to say that the claimant had normal range of motion and was neurologically intact. This was written on the date of the first examination by Dr. B, who is an orthopedic surgeon. On July 13, 1998, Dr. B documented continued complaints of pain in the neck and intrascapular area. On July 20, 1998, Dr. B wrote that he had returned the claimant to work and could do little else for her. He said that she had a chronic strain of the trapezius muscle. On August 17, 1998, he certified that she had reached MMI with a zero percent IR. This was also the date she was recertified by Dr. N. The only problem Dr. N noted was lumbar scoliosis.

On August 19, 1998, Dr. B withdrew his MMI due to the claimant's complaints of continued pain. On August 31, 1998, Dr. B saw the claimant for the last time and characterized her back condition as involving multiple degenerative discs and took her off work for two more weeks. He noted she had stopped taking her anti-inflammatory medication which had apparently led to a pain spell that sent her to an emergency room. On September 9, 1998, Dr. B wrote out a referral to Dr. N, stating that he did so because the claimant requested to be released from his care. Dr. N referred the claimant to Dr. R, a neurologist, who recommended steroid injections. Dr. R noted that the claimant complained of headaches, but showed no radiculopathy. He said an MRI of her head was negative. On March 22, 1999, Dr. B made another referral to Dr. N citing that he felt there was nothing more that he could do medically for the claimant.

Dr. D certified that the claimant had reached MMI on March 4, 1999, with a 10% IR, when he saw her the second time. He characterized her injury as acute cervical strain, mild lumbar strain, and myofascial pain with tender spots. He indicated that he reviewed the lumbar MRI and it indicated a hemangioma, with no other significant findings.

On November 19, 1998, the Commission denied the claimant her formal request to change her treating doctor to Dr. N. A second request was also denied on March 5, 1999, but the Commission official noted that Dr. B could refer the claimant to another doctor for treatment.

The claimant said that Dr. N has kept her off work until shortly before the CCH. She said Dr. N fully released her because she would otherwise face losing her job. She was going to try to return to work. The claimant said she had been getting better until her last attempt at returning to work in summer 1998, but that her condition was made worse by the return.

We first note that nothing in the hearing officer's decision can determine, one way or the other, whether referrals by Dr. B were medically necessary. While the self-insured need not pay for treatment initiated by a doctor who is not the treating doctor, it is clearly within the power of the treating doctor to approve or recommend health care. Section 408.021(c). While we affirm the hearing officer's determination that the denial by the Commission was not an abuse of discretion and that the claimant sought the change for reasons prohibited under Section 408.021(d), any further controversy between the parties as to payment for services rendered by Dr. N or Dr. R as referral doctors must be made through the medical dispute resolution process set forth in Section 413.031(d).

We also affirm the hearing officer's determination as to the periods of disability he found. A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, 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.). 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). Although another finder of fact may have evaluated the evidence and concluded that there was a longer period of disability, this alone does not compel reversal of the decision and the hearing officer's supportable weighing of the evidence. Accordingly, we affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge