APPEAL NO. 991363

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 26, 1999, a contested case hearing (CCH) was held. The issues disputed at the CCH were whether an injury sustained by the respondent (claimant) on _____, extended to her right shoulder, back, and neck; whether the appellant (carrier) waived the right to dispute these injuries; and whether claimant had disability from her compensable injury.

The hearing officer held that the carrier had not waived its right to dispute compensability. However, the hearing officer agreed that when claimant slipped and fell on _____, she injured her right shoulder, neck, and back in addition to her ribs, and that she had disability from her injury beginning on May 23, 1998, and continuing through the date of the CCH.

The carrier has appealed the hearing officer's decision on the scope of the injury and disability. There is no appeal of the dispute waiver issue. There is no response from the claimant.

DECISION

We affirm.

The claimant, who was a server with a restaurant operated by (employer), sustained an undisputed slip and fall on _____, while carrying a tray with beverages on it. She fell backwards and to her right, striking a chair back, and then fell straight back. Although the carrier cross-examined witnesses as to whether anyone "saw" the accident, it was undisputed that claimant had large bruises on her rib cage around the area she struck and had sustained contusions and rib and chest injuries. The claimant said she went to the restroom after falling to clean up and found some potato skin stuck to the bottom of her shoe.

Claimant's immediate manager, Mr. R, and her general manager, Mr. C, both agreed that claimant was a hard and good worker who pitched in to assist whenever she could, including working extra shifts when there was a shortage. They also both agreed that the claimant promptly reported her fall. Mr. R agreed that claimant told him she was okay, just embarrassed. However, Mr. C found out later that she showed bruises over her rib cage to some female managers, who told Mr. C that claimant was probably embarrassed to talk over her accident with him because her right breast was also injured. The claimant said her bruising ran from her mid shoulder down to her waistline.

The claimant continued to work but when she showed the female managers her bruises and a knot, they referred her to the employer's clinic doctor, Dr. E. Dr. E informed her that her wide ranging pain was due to contusions over her ribs and would go away with time. While claimant said her neck and back did not hurt this first week, by the next week

the pain had spread there and to her shoulder as well. She said that although the doctor had offered to take her off work, she was already off that coming weekend and declined. Mr. C said that she did not appear within that first two weeks to be hurt, but he said that she did complain to him before she eventually left work that she was working in pain, although she did not specifically say where she hurt.

The claimant said that she made herself work through excruciating pain. When she complained to her brother that she felt that the company doctor's treatment (pain medication) was not improving her condition, he recommended she see another doctor for a "second opinion" and referred her to Dr. W. She made an appointment to see Dr. W but in the meantime returned to Dr. E, who gave her a light-duty release effective May 19, 1998. Claimant discussed doing light-duty work with Mr. C, but on the morning she was to report for it, she had a reaction to the Vicodin she was taking and her husband called to tell Mr. C that she would not be in. Mr. C said that he felt claimant's husband was somewhat accusatory and he made notes reflecting that claimant's husband reported a reaction to the medicine "your doctor" gave to his wife.

Dr. W told claimant that she had independent injuries to her neck, back, and shoulder, and not merely referred pain from her ribs. Dr. W became the claimant's treating doctor. The claimant said she had received approval for one course of injections for pain relief, and the effect had lasted about a month. However, she said further requests by Dr. W for injections were denied, which she opined was unfortunate because she might have been able to return to work. Claimant said all medical treatment was denied for her neck, back, and shoulder. She said she was unable to return to work because she could not stay on her feet too long, had a hard time turning her head, and had pain in her shoulder and neck. She had had no previous injuries to her body in the disputed areas.

As late as August 1998, Dr. W was still unsure as to whether claimant might not have broken ribs. He further diagnosed right shoulder impingement and found a lot of muscle spasm in that area on examination. Dr. W noted that claimant had cervical and lumbar spondylosis. He indicated a desire to test to rule out ruptured discs. In October 1998, Dr. W noted that he attempted to precertify rehabilitation for claimant but the adjuster wished to deny it pending the benefit review conference. In November 1998, he diagnosed cervical and lumbar sprain. His reports throughout his treatment document pain upon palpation in the cervical, thoracic and lumbar areas.

Apparently, because claimant had told Mr. C before her accident that she might quit to earn more money working for a friend, surveillance of the claimant was undertaken on June 16th, July 4th and 5th. The investigator saw nothing because the claimant did not leave her home, but nevertheless speculated "there is still a potential that [claimant] might be working at home as a caterer or working part-time at another restaurant," and since surveillance didn't rule this out, more surveillance would be necessary.

In light of evidence of denial of payment for medical treatment, it is worth pointing out that initiation of payments by a carrier does not affect its right to deny compensability

during the 60-day period it has to dispute. Section 409.021(c). In light of the period of time in this case for which disability was found, and temporary income benefits awarded, any "savings" realized through denial of medical treatment or rehabilitation may have been offset.

We would note at the outset that while chronology alone does not establish a causal connection between an accident and a later diagnosed injury (Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994) neither does a delayed manifestation nor the failure to immediately mention injury to a health care provider necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ).

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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). The hearing officer could consider that the extent of the injury was not improbable given the mechanics of the undisputed fall. The defense argument essentially was that because claimant did not instantaneously complain of these injuries, the symptoms of which manifested a week after the accident, she did not sustain injury. This we do not conclude is persuasive that there was no extension of the injury. Moreover, the fact that claimant's desire to work inspired her to work through pain, was also argued as a "strike" against the claimant.

We have pointed out that in Western Casualty & Surety Company v. Gonzales, 518 S.W.2d 524, 526 (Tex. 1975), the Texas Supreme Court noted that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury, and that the full consequences of the original injury, together with the effects of its treatment upon the general health and body of the worker, are to be considered. There is no requirement that the full scope of the injury be known to or appreciated by the claimant when it occurs in order to be compensable. In this case, the hearing officer evidently chose to believe the claimant's explanation that she initially believed Dr. E's explanation that her pains in her other areas were "referred" pains from her rib contusion.

The hearing officer stated that she found claimant's explanation of events surrounding her injury credible. We will not reverse her findings of fact based upon this assessment of the evidence. In reviewing the record, we cannot agree that the great

weight and preponderance of the evidence is against the hearing officer's decision, and we affirm the decision and order. We will also point out that the carrier did not properly serve the claimant in this case and certified only to mailing a copy of the appeal to her attorney at the CCH. The argument could be made that the hearing officer's decision has already become final in accordance with Section 410.204(c).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge