APPEAL NO. 991422

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 June 4, 1999. The issues at the CCH involved whether the appellant, who is the claimant, sustained a compensable injury to his left foot on _____, and had disability as a result of his injury.

The hearing officer found that the claimant did not sustain injury to his left foot and therefore did not have compensable "disability," as that term is defined in Section 401.011(16).

The claimant has appealed, arguing that the hearing officer should have supported this decision with more detailed findings of fact. The claimant argues that the decision is against the great weight and preponderance of the evidence so as to be manifestly unfair or unjust, and requests reversal. The respondent (carrier) responds that the factual determinations of the hearing officer were well within her role as sole judge of weight and credibility, and are sufficiently supported by the record, and may not therefore be reversed by the Appeals Panel.

DECISION

Affirmed.

The claimant testified that on _____, the date of his claimed injury, he worked as a bricklayer for (employer), by whom he had been employed over 20 years, on and off, when there was demand for his services. He said he was laying a window sill in an apartment, and, while cutting a brick with his trowel, part of it hit his foot, and he stepped back then and twisted his foot. The claimant contended he reported this injury to his brother, who was working alongside him, and to his foreman, Mr. W.

Claimant agreed that a 1990 automobile accident resulted in injury to his left foot and insertion of a "pin" during reconstructive surgery to correct severe injuries he received in that accident. He contended that this pin was aggravated in the accident, and he had not otherwise had problems with his left foot in years. Claimant was treated by Dr. A on September 22nd. He said that he had told Dr. A about the incident of the brick falling on his foot and disputed any report from Dr. A stating the contrary. A few weeks later, Dr. A performed surgery.

Claimant was asked to explain why the statement of his brother, Mr. F, would have indicated that he was not aware of his brother's earlier accident. Claimant said that his brother was in the army at the time. However, he stated that his brother was out of the service in 1989, and he had the foot surgery in 1990.

Claimant said he was unable to work since _____. He agreed that Dr. A did not say, one way or the other, whether he could work. Claimant was thereafter treated by Dr. G, who took him off work in August 1998. However, on cross-examination, claimant agreed he had been incarcerated for a month during November 1998, and denied it was any greater length of time than that. Dr. G released him to light-duty work after the first of the year of 1999. He said he tried light duty but left after three weeks due to aggravation of his foot.

A September 17, 1997, report from Dr. A found that claimant had a sprained left foot, and noted that he contended injury at work two days earlier "but he is not sure how it was injured." Dr. A also wrote that he told claimant he had evidence of the repair screw "backing out." A hospital record dated September 24, 1997, diagnosed a loosening of the screw in claimant's foot and swelling around the screwhead. This report did not contain any report of an injury other than the automobile accident.

A transcribed statement from Mr. F said he did not see the accident happen but his brother told him he stepped back to keep the brick from falling on his foot. Mr. W said in his statement that he first knew of the injury when the claimant told him on September 15th that he could not walk and said he thought he had broken his foot. Mr. W said claimant was wearing boots.

The hearing officer stated in her recitation of the facts that she found claimant's testimony not to be credible. 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). 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 decision of the

hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the hearing officer's decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge