APPEAL NO. 991479

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 8, 1999. The issue at the CCH involved the extent of the compensable injury sustained by the appellant, who is the claimant. Specifically in issue was whether that injury extended to his right shoulder and neck, in addition to injuries to his thoracic and lumbar spine that occurred on _____.

The hearing officer found that the claimant failed to establish he sustained injury to his neck and right shoulder while working in the course and scope of employment on or about alleged injury.

The claimant has appealed. He argues facts and authority that he believes compel a finding in his favor. The respondent (carrier) responds that the hearing officer's decision should be affirmed.

DECISION

Affirmed.

The hearing officer has done a thorough job of summarizing the facts and we will only briefly repeat pertinent facts here. The claimant was employed by (employer) for three months at the time of his injury. He said he was pulling down asbestos that was combined with concrete in balls, and when he, at one point, reached with a crowbar to knock one down, the crowbar "went too far" and he hyper-extended his body. According to the claimant, he thereby hurt his right shoulder, and entire length of the spine. The employer's incident report filed by the claimant on _____, reported that he felt something pull in his back when he reached out with a crowbar.

The claimant was initially treated by the clinic used by the employer three days after the accident. The diagnosis was lumbar and thoracic strain/sprain, and subsequent physical therapy was directed to those regions. At the time of the CCH, his treating doctor was Dr. C, to whom he was referred by his attorney. The claimant first saw Dr. C on October 16, 1998. The claimant said he told Dr. C that his neck and lower back hurt, and he reported no other injuries. He said his neck pain was about a level four on a 10-level scale. He said Dr. C took him off work. While Dr. C's narrative reports indicated that claimant hurt his neck and shoulder (in the recited history of injury), the injuries for which Dr. C treated the claimant were to his lumbar area. On April 23, 1999, Dr. C wrote that he believed that the claimant had injuries to his neck and shoulder as well and sought to have treatment for these areas authorized.

The claimant agreed that the clinic had released him to work on August 14, 1998, and he worked from that time until he was laid off on October 5, 1998, due to a reduction in force. He said he had not sought medical treatment while working because he was feeling

fine and performing light work; however, his low back pain rose to level 10 about a month before he first saw Dr. C. The claimant, on cross-examination, amended his testimony to say he had been doing heavy work in the employer's warehouse. The claimant said his layoff affected his decision to seek further medical treatment.

Essentially, the claimant contended he had reported the full scope of his injuries starting with the clinic, and he also reported to the physical therapist. He said that most pain at the time was in his lower back.

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.). While delayed manifestation of an injury does not in and of itself rule out a connection to a work-related accident, it is a factor that the trier of fact may consider. 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:

_____
Thomas A. Knapp
Appeals Judge

_____
Alan C. Ernst
Appeals Judge