APPEAL NO. 991484

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 11, 1999, a contested case hearing (CCH) was held. The issues concerned the extent of the respondent's (claimant) _____, injury, and whether he had disability as a result of his injury. The matter which caused controversy was that claimant had a number of other diseases that the appellant (carrier) argued overcame any results of his injury.

The hearing officer disagreed and found that the claimant, described as credible in the recitation of the evidence, injured his lumbar and thoracic spine as the natural result of his injuries that occurred on _____, and that he was unable to obtain and retain employment equivalent to his preinjury average weekly wage as a result of his injury.

The carrier appeals, arguing facts that it believes prove that if there was a back injury, it was not the predominant factor resulting in the long period of losing time from work. The primary finding of the hearing officer that is expressly appealed is the determination relating to disability. The claimant responds that the facts sufficiently support the hearing officer's decision.

DECISION

Affirmed.

All dates are 1999 unless otherwise indicated. The claimant was employed as a truck driver for (employer) on _____ when he went over a very deep pothole and slammed the area around his rib cage into the steering wheel. The next day, he was involved in another incident where he nearly went off the road and was sent to the hospital by the police, but he maintained he did not sustain an injury in that incident. The claimant said that the bruises from this contact "rose" to the surface of his skin within a few days. Pictures taken February 7th show massive bruising around his midsection and there is also a spot bruise and area bruising directly in the middle of his low back. While claimant conceded that he was also treated for diabetes, hypertension and sleep apnea, he denied that these syndromes were the primary reason he was unable to work. However, he said he had passed the Department of Transportation certification. The claimant was also evaluated for possible congestive heart failure but said he had been told he did not have heart failure, although sleep apnea could be considered a precursor to the condition.

Cross-examination of the claimant was largely devoted to questioning him as to whether medical records already in evidence actually said what they appeared to say. Claimant did add some new information that his primary treating doctors, who were also his family doctors, were concerned with his overall health and were not focusing on his complaints of repeated pain in his back. Although the carrier asserted that there was no mention of any lumbar problems until after the benefit review conference on April 16th, there was a medical report dated March 30th by Dr. Y, that recorded claimant's complaints of low back pain.

Claimant's family doctor, Dr. D, wrote a letter attributing claimant's inability to work to his accident and to congestive heart failure. The claimant said the primary reason he was unable to work since January 31st had to do with his back pain. He said that by the time of the CCH it had essentially resolved and he believed that his doctor would release him back to work during the coming week.

By way of analogy, we would point out that in case law having to do with aggravation, the employer is held to accept the employee as he is when he enters employment. Gill v. Transamerica Insurance Company, 417 S.W.2d 720, 723 (Tex. Civ. App.-Dallas 1967, no writ). An incident may indeed cause injury where there is a preexisting infirmity where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). Similarly, there can be no offset for the effects of a compensable injury because the one injured is not a well person at the time; the carrier bears the burden of proving that other conditions have been the sole cause of the disability. Gill, *supra*; Texas Workers' Compensation Commission Appeal No. 961283, decided August 19, 1996.

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). This is a classic case of resolving conflicting evidence. We will not disturb the hearing officer's determinations of fact absent a great weight and preponderance of the evidence to the contrary. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). That is not the situation here, and we accordingly affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge