APPEAL NO. 991624

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 29, 1999, a contested case hearing was held. The issue concerned whether the respondent, who is the claimant, sustained an injury in the course and scope of his employment on injury 2, the extent of that injury, and whether he had the inability to obtain and retain employment equivalent to his preinjury average weekly wage (*i.e.*, had disability) due to a compensable injury.

The hearing officer determined that the claimant injured his left shoulder in an incident at work on the date in question, but that he did not injure his cervical spine. The hearing officer further held that the claimant had disability for the period from February 17 through May 28, 1999.

The appellant (carrier) has appealed, arguing that the evidence was not sufficient to support any of the findings made in the claimant's favor as to the occurrence of an injury and disability. The claimant responds that the decision is supported by the evidence.

DECISION

We affirm.

The claimant had worked for the employer, (employer), since 1985. He assisted in the assembly of cardboard boxes, which involved carrying heavy packets of cardboard from a conveyor belt to a location where they were fed into a machine, which he said was at a height of about four and one-half feet. He said that on injury 2, as he fed cardboard into the machine, he felt a pinching in his left shoulder. The claimant said he complained of the pain to his coworker. This occurred around 1:00 p.m. He first reported his injury on February 16th to a supervisor, Mr. H. Claimant indicated that it was the back of his shoulder in which he felt pain. He went to see his doctor, Dr. E, on February 17th. He explained the passage of time by saying that his shoulder had become inflamed and swollen since the incident at work and that he could no longer stand it by February 16th. Claimant also said that his swelling began on that date.

When he reported the accident, claimant said he was sent on February 18th to the employer's chosen clinic. He said they told him there was a problem with his shoulder but really could not do anything. Claimant said that the pain had started to go up to his neck about two days before his inflammation started. The claimant said he was no longer able to work, and could not lift his arm higher than shoulder height.

Claimant had a previous low back injury in injury 1. He said that between February 5th and 16th, he had two days off to go to "immigration." He denied he had received any letters from the employer about available light duty. Claimant felt he was unable to work although he said Dr. E's treatment was making him better, and giving him more range of motion.

There were no medical records from the clinic where claimant was sent by his employer. Dr. E's medical records found that claimant's shoulder condition was bursitis. Cervicothoracic sprain and syndrome were also diagnosed. Claimant was kept off work through various periods by Dr. E, whose last off-work slip said that claimant should stay off "until further notice."

A doctor selected by the carrier examined the claimant and certified that he had reached maximum medical improvement on May 28, 1999, with a zero percent impairment rating. According to this doctor's narrative report, the claimant reported an injury through repetitive lifting. He reported that no objective reason exists for claimant's contention that he was unable to work.

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). A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). 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). While another finder of fact in this case could have drawn different inferences, we cannot agree that the decision reached by this hearing officer is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. We affirm the decision and order of the hearing officer.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Dorian E. Ramirez
Appeals Judge