APPEAL NO. 991656

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 22, 1999. The issues at the CCH involved the scope of an injury that occurred on _____, to the appellant, who is the claimant; whether her compensable injury was the producing cause of complaints after an Injury 2, motor vehicle accident (MVA) or whether the MVA was the sole cause of disability and the need for treatment, and whether claimant had disability as a result of her _____, injury.

The hearing officer held that the claimant's _____, injury was limited to a mild cervical strain or sprain, and that this injury was not the producing cause of claimant's physical complaints after Injury 2. The hearing officer made no express finding on the stated "sole cause" issue, but found that claimant did not have an inability to earn her preinjury wage as a result of her _____, injury and therefore did not have disability.

The claimant appeals this decision as being against the great weight and preponderance of the evidence. The claimant recites evidence believed to support a contrary result. The respondent (carrier) responds that the facts support the inferences drawn by the hearing officer as well as his assignment of credibility of the medical evidence.

DECISION

We affirm.

The claimant was employed by (employer) as a safety director; she was involved in the investigation of accidents, including work-related injuries. She said that she was emptying some trash in a large 55-gallon trash dumpster and, as she lifted the cover, it began to tip over. She grabbed for it with her left hand and felt a pop and then pain. Claimant was treated that day by Dr. W, her family doctor, who prescribed physical therapy, which she completed in July 1997. Except for the day of the accident, claimant lost no time from work prior to November 5, 1997, when she said that she began losing time due to this injury. This was after she was involved in an MVA on Injury 2, when the vehicle in which she was a passenger was rear-ended. Claimant was wearing only a lap seat belt. She nevertheless maintained that the only injury she sustained in the MVA was to her low back and not at all to her neck and arms, although she agreed that Dr. W, whom she saw that same day, prescribed a cervical collar. Physical therapy following the MVA consisted of treatment for her neck.

The claimant said she began losing time from work on November 5, 1997, but was released back to work by her doctor on January 6, 1998. She did not return to any work, however, maintaining that she was waiting for her old employer to call about her return to work (she had gone to see the employer when she was released and was told the company would have to check with its lawyer). Claimant had right carpal tunnel syndrome (CTS)

surgery on February 16, 1998, and was released three weeks after that, but did not return to work until July 7, 1998. She returned to work working as a waitress on that date.

The surgery for claimant's right wrist was performed through her private health insurance. Claimant agreed that she understood the differences in coverage for workers' compensation and regular health insurance. She agreed that she had spinal surgery prior to _____, but the time was not otherwise developed in the record.

On Injury 2, Dr. W diagnosed cervical strain and lumbar sacral strain. Dr. W reported that claimant was thrown around "pretty good" during the collision. Objective tests are contained or referred to in the documentary evidence. In July 1997, a cervical MRI reported a very minimal, broad-based protrusion at C5-6. An MRI taken at the same time of the left shoulder was similarly negative. A cervical CT scan/myelogram from March 13, 1998, was reported as negative for disc protrusion.

Dr. W referred claimant to Dr. S, who ordered an EMG. Claimant had an EMG in September 1997, before the MVA, due to complaints of numbness, primarily in her left hand. The evaluating doctor, Dr. T, wrote that a nerve conduction study showed that there was some mild left abnormality; "however absolute motor distal latencies fall within the normal range bilaterally for median and ulnar nerves." A needle examination was performed that was normal for both arms. Dr. T stated that his final impression of the EMG was mild median neuropathy at the wrist bilaterally. He felt that her symptoms also suggested cervical radiculopathy. Claimant returned to see Dr. S on (2nd injury date) , the day after her accident and reported that her symptoms were worse.

On November 2, 1998, Dr. S wrote to the claimant's attorney his opinion that claimant's problems for which he was consulted in September 1997 had to do with cervical strain and sprain. He concluded that claimant's increasing symptoms after the MVA were due to injuries sustained on _____, with wrist symptoms after (2nd injury date) that may have been more related to the MVA. By contrast, on November 3, 1998, Dr. GS claimant's surgeon, wrote that he did not feel that claimant's right wrist condition, which was arthritis, torn ligaments and CTS, arose from the compensable injury. He reversed his position by May 26, 1999, after reviewing claimant's entire medical records, and stated that he believed her left wrist was injured on _____. He indicated that based upon his surgical findings, there was a high probability of this being associated with a traumatic incident on _____. His conclusion was that her right wrist injury was "directly related" to her compensable injury.

Finally, a peer review doctor for the carrier, Dr. H, who also examined the claimant's medical records, concluded that claimant's condition did not stem from her April 15th injury, as opposed either to the MVA or a systemic disease. Dr. H noted that another EMG had been performed in December 1997, which failed to reveal any ulnar neuropathy or cervical radiculopathy. Dr. H stated that it was "obvious" that the _____ injury involved only the left side and was, at best, a mild cervical strain.

The hearing officer explained in his decision why he did not find the opinions of Dr. S and Dr. GS to be persuasive. This evaluation was his to make as 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.). 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.). He could well conclude from this record that any disability related solely to the MVA (for which there is at least an implied, if not express, finding) because whatever occurred on _____, was plainly not of the magnitude to cause an inability to work. The hearing officer's determination that claimant's compensable injury was fairly mild and did not carry forward to the time after the MVA is supported by the record. The likelihood of a neck injury following a rear-end MVA is very nearly within common knowledge.

We do not agree that the great weight and preponderance of the evidence compels a contrary result and, accordingly, we affirm the hearing officer's decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge