APPEAL NO. 991844

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 3, 1999, a contested case hearing (CCH) was held. The issues disputed at the CCH were whether the appellant, who is the claimant, sustained an injury on _____, and whether the respondent (carrier) was relieved from liability for claimant's failure to notify the employer within 30 days after his injury. Disability was also in issue.

The hearing officer held that the claimant was not injured in the course and scope of employment, and that he did not give timely notice of injury to his employer, but that he was unable to obtain and retain employment due to the claimed injury for the period from January 5 through August 3, 1999.

The claimant appeals, arguing that his injury is well documented in the medical evidence and that he had disability from this injury. Further, the claimant argues that the evidence proves timely reporting of the injury. Finally, the claimant argues that the hearing officer did not render his decision in accordance with the Texas Labor Code, therefore rendering the decision reversible; the argument is based upon a reference to the "Texas Code Ann" in the "decision" portion of the decision. The carrier responds that all findings complained of were resolutions of conflicting evidence by the hearing officer which should not be set aside by the Appeals Panel.

DECISION

Affirmed.

The claimant had been employed for five years by (employer) at the time of his injury. He was a service sales representative in charge of making sales and deliveries. The claimant contended he was injured the day before Holiday weekend, on _____, while making deliveries. Because he was making an unscheduled delivery and was running behind, he attempted to hurry and jumped from a four-foot high loading platform. He said when he landed, he felt a mild pain as his left knee buckled up. This happened in the early afternoon of his regularly scheduled 14-hour day. He said at the end of the day he felt a mild pain in his lower back and left knee. However, it became worse that evening as he drove out of town for the holiday. He said by Monday following the holidays he was in deep pain. Claimant said he reported his injury that morning, before he left on his route, to his supervisor, Mr. R.

Claimant said he advised Mr. R of his injury and that Mr. R responded to let him know if it continued. The claimant was able to complete his duties that day, although he felt worse as a result. He said that the weight of items he delivered could be 75 to 80 pounds of product at a time. When he returned from his route, the claimant said he approached another supervisor, Mr. C, and related "the situation" to him. He said he told Mr. C of his injury but that he did not believe it was serious and would tough it out. He was advised by

Mr. C to ask for assistance. Neither Mr. R nor Mr. C discussed with him the necessity of filling out an accident report. He asked Mr. C for an assistant during the next week. An assistant was assigned to him on December 9th, for two days, until claimant was terminated on December 10th for arriving 10 minutes late the day he requested an assistant. The evidence showed that claimant had been previously warned several times about reporting tardy back to work after doing his routes.

Claimant's treating doctor was Dr. B, with whom he began treating in January 1999. He said he was diagnosed with torn knee cartilage and two herniated lumbar discs. He had been taken off work throughout his treatment by Dr. B. Dr. B's March 1999 report diagnoses lumbar radiculopathy and disc displacement. An MRI of the left knee taken on April 22, 1999, showed radial tears in the medial meniscus muscle and chondromalacia. The lumbar MRI of the same date showed a large herniation at L5-S1 touching the nerve root.

Mr. R testified that he first became aware that claimant was contending a workers' compensation claim in January 1999. He said he knew nothing of claimant's purported injury prior to that. Mr. R agreed that claimant had assistance for two days and that he did not know the reason why. Mr. S, the general manager of the employer who also terminated the claimant's employment, said that he had investigated the purported accident by talking to Mr. C, and he did not indicate that claimant reported his injury. Because it was claimant's position that he timely reported the injury, there was no assertion of a "good cause" reason for untimely reporting.

There is no merit in the argument that the decision was not based on the Texas Labor Code. We will correct the obvious typographical error upon which this argument is based to change all references in the decision to read "Texas Labor Code Ann." where the words "Texas Code Ann" appear.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. The facts set out in a medical record are not proof that a work-related injury, in fact, occurred. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The hearing officer could choose to believe that even though there were indications of an injury in April 1999 when testing was done, this did not prove that they occurred as the result of the events claimant contended took place at work on _____.

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 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 cannot agree that his decision on the appealed issues was against the great weight and preponderance of the evidence and hereby affirm his decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge