APPEAL NO. 992023

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 August 5, 1999. The issues at the CCH were whether the respondent's (claimant) _____, compensable injury was a producing cause of the claimant's L4-5 disc protrusion; whether the claimant had disability; and whether the appellant (carrier) timely contested compensability. The latter issue was resolved in favor of the carrier, is not on appeal, and will not be mentioned further. The hearing officer determined that the _____, compensable injury was a producing cause of the claimant's L4-5 disc protrusion and that the claimant had disability from the _____, compensable injury from April 10, 1999, to the date of the CCH. The carrier appeals, urging that the pertinent findings leading to the decision are not supported by the evidence and asks that the decision be reversed. No response is on file.

DECISION

Affirmed.

The appeal is lodged on an evidentiary sufficiency basis and, in such situations, we consider and weigh all the evidence in the case and set aside the decision only if we conclude that the decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. It is not enough, as we conclude is the case here, that another fact finder might draw inferences different from those drawn by the hearing officer from the conflicting evidence of record. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. We recognize that resolving conflicts and inconsistencies in the evidence is a matter generally left to the hearing officer (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and where there is some probative evidence to support the resolution, we do not substitute our judgment absent the standard set out above being reached.

The claimant tripped and fell at work on _____, injuring, at least thought to be so at the time, his left ankle, with pain up his leg to his hip. He reported the incident to the office at the time but did not think he needed a doctor. He stated he did not know if he had a back injury at that time. Later, apparently off work, his ankle twisted from his injury as he got out of his truck and he decided he needed to see a doctor. Again, he did not know at the time if his back had been injured. X-rays of the ankle showed no fractures or dislocations and the medical report did not make any mention of any back complaints or injury and an ankle sprain was diagnosed. The claimant testified that he did mention his

low back pain and did not know why it was not written down. The claimant was returned to light-duty work and continued working until February 6, 1999, when he was laid off because of the job coming to an end. The claimant then worked at another jobsite in (city 1), Texas, for the employer for a week, after which he was terminated and went to (city 2), Texas. There he sought medical treatment for an unrelated anxiety condition, although the claimant testified he had continued to have back pain. He later went to (state A) to visit a relative and finally ended up in (state B) and (state C) where, he states, his back pain bothered him so much he went to a doctor on April 10, 1999. At that time he was placed on off-work status. This is the first indication in medical records of any back injury or condition. In any event, a subsequent MRI was performed and a diagnosis of a herniation at L4-5 was made. Under his doctor's care in (state C), the claimant has had therapy and injections for his back condition. His treating doctor, Dr. S, states in a July 29, 1999, note that "[a]s it sounds, the mechanism of injury tripping and then falling causing his inversion ankle injury could on a more probable than not basis cause back and hip pain a [sic] radiculopathy." (The carrier timely disputed a back injury as being related to the _____, incident.)

The carrier called the project safety manager at the _____, jobsite who testified that the claimant only complained of an ankle sprain and never complained of any back pain or injury nor did he give any indication of any back problem as he worked up to February 6, 1999. The carrier also called another safety manager from the claimant's initial jobsite who testified that the claimant never complained or gave an indication of any back pain or injury. He further testified that when the claimant got notice, along with others, about the reduction in force, the claimant threatened the employer, using profanity that "you *** have not heard the last of me, you'll hear from my attorney next." An affidavit from the foreman at the employer's (city 1), Texas, site stated that the claimant worked there from February 22 to 28, 1999, and that during that time, the claimant never mentioned anything about back pain or an injury and that he did not manifest any indication of a back injury. The carrier also introduced a short statement from the doctor who had seen and treated the claimant following the _____, incident who stated:

> I have reviewed the medical records from (state C) pertaining to [claimant] and his complaints of low back pain. [Claimant's] current complaints of low back pain are inconsistent with my examination of him on 2/01/99. I do not feel [claimant's] current complaints of low back pain are related to his accident on _____. [Claimant] did not make such complaints to me when I examined him on 02/01/99.

Clearly, there was conflict and inconsistency in the evidence and while the evidence would support different inferences than those found by the hearing officer, we cannot reach that higher standard of review on appeal and hold that the findings and conclusion made are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge