APPEAL NO. 000055

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 4, 1999, a contested case hearing was held. The issues concerned whether the respondent, who is the claimant, sustained a compensable injury to his low back in addition to an inguinal strain, whether he had disability for the period from July 9 through September 5, 1999, and whether the appellant (carrier) waived the right to contest the low back condition by not contesting compensability within 60 days of being notified of those injuries, pursuant to Section 409.021.

The hearing officer determined that the carrier had not waived the right to dispute compensability. The hearing officer further held that claimant injured his low back and had disability for the disputed period.

The carrier has appealed. It argues that the findings of injury to the low back and disability therefrom are "manifestly wrong and grossly unjust" in light of the evidence presented. The carrier points out that there was an intervening injury. The carrier argues that its videotape shows that there was no disability experienced by the claimant. There is no response from the claimant.

DECISION

Affirmed.

The claimant was employed by (employer). He injured himself on _____, while lifting a cast iron manhole cover. The claimant said he felt pain in his stomach, all the way down to his leg. He was initially treated by Dr. N at (the medical clinic). Dr. N's initial medical report stated that claimant had an inguinal strain, with no hernia. He was given pills and released to work light duty. He was assigned to drive a backhoe but the pain persisted. He did not really consider this to be light-duty work.

The record shows that Dr. N certified maximum medical improvement on October 1, 1998, with a zero percent impairment rating. Claimant was returned to regular duty by Dr. N on September 25, 1998, and February 23, 1999. The claimant then was released to restricted duty on March 22, 1999 (no lifting in excess of 25 pounds). The claimant said he was returned to full duty as of July 7 and fired on July 9, 1999. The claimant said he remained off work for a couple of months due to his pain, but eventually had to return to work to pay the bills because his medical treatment was not being paid for by the carrier. He returned to work on the 5th or 6th of September.

At some point, claimant began referring to another injury that occurred while lifting steel bars. The carrier's attorney stated that the carrier was unaware of another injury, and there might be a difficulty in translation. The claimant then said he was injured "lifting bars"

on _____, but later on, said that it happened sometime after this date, on a date he could not recall. The claimant's May 1999 statement to the adjuster also referred to a possible subsequent incident carrying bars when he was supposed to work light duty.

Claimant was referred by Dr. N to Dr. B, and had an MRI. Dr. B's note of April 23, 1999, recorded impressions of thigh strain and lumbar syndrome. He took the claimant off work. On May 17th, Dr. B noted that the MRI showed a protrusion at L4-5, possibly impinging on the L5 nerve root.

Claimant was seen by a doctor for the carrier, Dr. M, who disputed that the source of claimant's pain was a degenerative disc in his back. He noted that claimant was not having limitations of range of motion nor lumbar symptoms. Dr. B responded that it was indeed possible for the claimant to have such a condition without manifesting back pain, and that he believed that radiating leg pain was a symptom related to his disc problem.

A videotape taken on a few occasions during the last week of August 1999, shows the claimant buffing his car on the outside and brushing out the inside and shopping. He wheeled his groceries out to the back of his car in a shopping cart. At one point, he loaded what appears to be a 10-pound bag of ice into the back of his vehicle.

We cannot agree that the record indicates that the hearing officer's fact findings represent a manifest injustice. 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 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 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.). While claimant generally alluded to another incident causing pain, the medical records in evidence reflect treatment for the _____, injury only. The hearing officer could conclude that claimant reexperienced pain from his injury, rather than conclude that he sustained a second injury. He could choose to believe Dr. B's analysis of the back injury, rather than Dr. M's.

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.). In considering all the evidence, we find the hearing officer's decision sufficiently supported, and affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge