APPEAL NO. 000329

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 20, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ or _____; that the claimant failed to timely notify her employer of an injury pursuant to Section 409.002; and that the claimant was not unable to obtain and retain employment due to the alleged injury, and consequently did not have disability.

The claimant has appealed all determinations against her, asserting that the hearing officer acted against the great weight and preponderance of the evidence. The respondent (carrier) has responded by reciting the evidence in support of the decision.

DECISION

Affirmed.

The claimant said she started working for (employer) in February 1995. At the time of the claimed injury, the claimant said, she inspected pants. The claimant said that she had injured her left hand on _____, but did not miss work due to that injury. The doctor treating her for this injury, Dr. N, urged her to report to her employer that her left arm to her shoulder was also hurting.

She contended that on _____, as she was getting ready for inspection, she injured her lower back when the pants began to fall from her cart and she stopped to set them right. She said that on _____, she went to talk to Ms. S at 9:00 a.m. that day to report her arm pain, and also took the opportunity to report a low back injury. She said that she told Ms. S that she had been pulling a cart, and "everything" was hurting.

She said the first doctor to treat her for her back was Dr. S on October 13th, and he just gave her medication. However, office notes submitted for Dr. S show that it was September 14, 1998, when he saw claimant relative to complaints about her left shoulder to her back and waist. Claimant said she tried thereafter not to pay too much attention to the pain, but that on December 16th she "felt changes." She saw Dr. M, D.C., the last week in October.

Asked about her _____ injury, the claimant agreed that it affected her cervical spine and entire left arm, as reflected in Dr. N's treatment notes of September 25, 1998. The claimant had been given an eight percent impairment rating for this injury in February 1999.

The claimant said she missed no time from work due to this injury except for leaving two hours early one day in order to go to the doctor. However, on cross-examination, she said that she began missing time from work on December 16,1998, and had not returned. Upon questioning by the hearing officer, the claimant said that this lost time was due to her left arm and hand injury.

The claimant agreed that she reported her _____, back injury at the employer's plant, on official report forms, on April 6, 1999. It was noted that all paperwork for her _____ left hand and arm injury had been completed by September 15, 1998. The claimant said that a larger gap in formally reporting had occurred for her back injury because she did not feel she would have been believed in her contention of another injury so soon after the hand and arm injury. She further stated that she had "no interest in having suffered another accident."

Ms. S testified that she was the workers' compensation specialist for the employer. She said that claimant had been put on modified duty, per Dr. N, for her left arm injury. She recalled no conversation with claimant about her low back injury until April 6, 1999.

Ms. S said that an earlier conversation that had taken place in _____ was with reference to other pains in which claimant contended that she was having pain in her shoulder, neck, and upper back, but attributed it to "rheumatism." (The claimant testified that it was Ms. S who brought up the "arthritis" possibility, and that claimant was only 32 years old). This was corroborated by another employee who was present during this conversation, Ms. N.

The medical records show that claimant began treating with Dr. M sometime in late 1998 and that he was issuing restricted work slips for her, but the nature of the injury is not described in these slips. Dr. M's Initial Medical Report (TWCC-61) was dated February 15, 1999, in which he contended he had treated her for lumbosacral injury that occurred on _____. The history of injury given was that a cart she was pushing tilted over and she began to have diffuse low back pain. Claimant filled out an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) for a low back injury on April 6, 1999, that asserted a (alleged date of injury), date of injury. It appears that claimant was referred on December 9, 1998, for nerve conduction testing relative to her upper extremity injury.

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.). In reviewing the record here, we find sufficient support for

the conclusions concerning injury and timely notice that were reached by the hearing officer. We also agree that the claimant's testimony failed to establish, and indeed refuted, any period of disability resulting from the claimed low back injury.

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.).

That is not the case here, and we affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Judy L. Stephens
Appeals Judge