APPEAL NO. 000524

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 January 25, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury and whether the claimant had disability. The hearing officer determined that the claimant sustained a compensable injury on _____; and that the claimant had disability beginning May 10, 1998, and ending June 23, 1998. The appellant (carrier) appeals, requesting that we reverse the hearing officer=s decision and render a decision in its favor. The carrier asserts that disability and the injury itself were fabricated by the claimant. The claimant responds, urging affirmance.

DECISION

We affirm the decision.

The claimant was employed by (employer). On _____, he was working on a conveyor belt, discarding damaged cinder block bricks with coworkers by removing them from the belt and pitching them in a refuse bin. The claimant said that these blocks weighed in excess of 30 pounds when whole. He was unable to say if he was hit by a whole or partial brick when a coworker who was slightly in back of him pitched a brick that hit him in the head, neck, and upper back. The claimant was agitated and chased the coworker. He said he reported the incident that day to his supervisor.

The claimant said that because he was warm from working, he did not have immediate pain but it increased after that day. When he returned two weeks later to his residential area in South Texas, he sought medical treatment for problems with his neck and upper extremity.

Claimant said he was initially treated at a clinic and then by Dr. S, and eventually by Dr. E, D.C. Dr. E's medical records dated September 17, 1998, record a date of injury of April 4, 1998. Dr. E answered interrogatories by stating that be believed that claimant had a resolved cervical and thoracic strain and resolving joint dysfunctions in both areas, caused by the _____, injury.

Dr. S took claimant off work on May 11 through June 5, 1998. He noted in his initial visit of May 11, 1998, that claimant was hurt on that date. He noted some swelling in the thoracic area on the left. Dr. S noted that x-rays were normal. By June 5th, Dr. S found that claimant still had a bit of stiffness, and assessed that the problem was primarily a soft-tissue injury. A letter from the employer to the claimant acknowledges receipt of the off-work advisory from claimant's doctor, and informs him that there is no light duty and his return to work will require a full release. The claimant said that when he got a full release, it was at his request because he needed the money and was not receiving workers= compensation.

On June 19th, Dr. S noted that claimant had nearly full range of motion. Dr. S's December 1998 report once again repeated the history of a May injury to the left posterior area of the neck. Despite discrepancy in dates of injury, both Dr. E's report and Dr. S's report note the same description of how the injury happened.

A statement from a supervisor which is date-stamped by the carrier on May 12, 1998, sets out the events of _____, as related by the claimant. The added information on this statement is that claimant declined to see a doctor on that day, expressing a preference to see how he felt the next day, and then said that he felt fine on the next day. In a statement that claimant gave to the adjuster on May 20, 1998, he said that the impact "doubled him over." No records were in evidence for claimant's first visit to the Clinic and carrier said that none were produced for the alleged date when it obtained a subpoena against the clinic for treatment records. A videotape taken of claimant on May 23, 1998, shows essentially average movement which can be said to neither confirm nor utterly refute the existence of a soft tissue injury.

All of the conflicting evidence was before the hearing officer to weigh and consider. The hearing officer is the sole judge of the weight and credibility of the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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.). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). All the conflicts and discrepancies were presented to the hearing officer to resolve, and her resolution is supported by the record.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge