APPEAL NO. 000643

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 March 3, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable low back injury on _____, and had disability from October 15, 1999, through the date of the CCH. The appellant (carrier) appealed, arguing facts from the record that weigh against the hearing officer's decision that the claimant sustained a compensable injury. The carrier argues that because there was no compensable injury, there can be no disability. The appeal file does not contain a response from the claimant.

DECISION

We affirm the hearing officer's decision.

All dates are 1999 unless otherwise stated. The claimant was employed by (employer) on _____, the day he said he was injured at work. He was an assembler whose work hours ran from 7:00 a.m. until 3:30 p.m. He had been a materials handler, but this line was shut down for construction work and he was then assigned to be a floater, which meant that he could work various types of jobs. He said that at the time of his injury, he was assembling access panels, which meant they had to be retrieved from a cart that came down the line. The claimant said that to get one of the panels, he had to bend almost down to the ground. His quota was 500 panels a day.

The claimant said that the access panel assembly was a new job and he was not used to stooping over all day, and believed that this led to his injury. He said that he hurt the right side of his back. Claimant reported this to the company nurse, who gave him ice and aspirin. Notes from the company nurse log in claimant with complaints of back pain on _____. He said that he also reported this on _____ to his supervisor, Mr. J. As he recalled, he was pretty much told to get back to work by Mr. J. He said that he was moved to another job the next day, but some stooping was still required.

The claimant went to see his doctor, Dr. H, on October 19th. Dr. H prescribed medication but urged claimant to seek treatment elsewhere as she did not treat work-related injuries. The claimant eventually saw Dr. M, at the (medical clinic). An MRI was recommended but denied by the carrier. The claimant underwent physical therapy and was not sure of his diagnosis. The claimant cited a few times when he called to report pain or absence to Mr. J and left messages on Mr. J=s answering machine. He said he called October 15th, 18th, and every day thereafter. However, he said that the messages did not indicate an injury, but merely asked that his call be returned as soon as possible. The claimant testified that he and Mr. J had had some personal conflict over claimant's wearing of an earring. It turned out that claimant had filed close to nine grievances over two years with the employer.

The medical clinic records indicate a diagnosis of lumbar and sacroiliac strain. Claimant was taken off work on October 28th and kept off. An x-ray taken on November 3rd,

was reported as showing degenerative changes in the lumbar spine. The claimant weighed 360 pounds and was six feet tall. Records were produced that claimant made a claim for a lumbar strain in January. The employer's nurse=s notes document that claimant was seen for back pain from October 7th through the 14th.

The claimant said that although his back pain actually started _____, it started hurting badly on _____. The claimant described his job and estimated that 50% of his time on the access panel assembly involves stooping. He said that some stooping was involved to attach some of the screws at about knee height.

Evidence was brought out that claimant had contended different dates of injury. In an interview with the adjuster, he contended he was injured on _____, later saying that it must have been the _____. Later in the interview, claimant speculated that his date of injury was a week before the _____, when he was put on a job he was not used to doing. The conversation with the adjuster took place on October 19th. The claimant explained that he was not prepared to give a statement and did not have all the information at hand.

Mr. W testified. He said he had been claimant's supervisor the week of October 4th through 8th (which the claimant had denied). Mr. W said that the workstation at which claimant contended injury occurred involved working 99% of the time at shoulder height. He said that carts where components were located was about knee high. He said that on _____, claimant was working in a "torque down" area and complained about the job the whole time. He complained that it was bothering his back and he wanted to go to medical. Mr. W gave claimant permission to go, and said he found out later that the claimant did not seek medical treatment that day.

Mr. W said that any bending on this workstation was less than 25% and much of the work was done at waist level. He said that on October 14th, claimant was reassigned to the torque-down station. Asked by the hearing officer if he considered the claimant's report of back pain from the torque-down job on the _____ of _____ to be a report of a work-related injury, Mr. W said "I had no idea." Mr. W apparently made no further report to his own supervisors but did make note of it.

Mr. J said his supervisory experience with claimant had been friendly. He agreed that claimant was vocal in his complaints about job assignments. Mr. J identified claimant's workstation as the access panel assembly, which would involve bending down to put in some bottom screws 25% of the time. He received a message from claimant on October 8th, when he was assigned to work a "vacuum loop" that the line was moving too fast. Mr. J said that claimant complained all day long on the 14th when he was reassigned to torque-down. He said that he discussed restrictions with claimant on that date, and that claimant said he did not need restrictions because his problem was that he was 150 pounds overweight. Mr. J said that claimant left a message on his answering machine on _____ saying that he would not be coming in to work because he got hurt the day before.

Mr. J said that the conversation relating to the earring was joking and he did not threaten the claimant with bad work assignments. He said that access panels for assembly would be located underneath a table that was 32 to 33 inches high. He agreed that 500 panels per day being assembled would be a close estimate, although he denied that there were quotas as such.

The hearing officer actually found that injury occurred on _____, as opposed to _____. 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). 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). The claimant's testimony about his activities during the day was enough to establish a specific injury and the causal connection to work, but we note that the hearing officer's finding of a compensable injury occurring on _____ is not necessarily dependent upon a specific versus repetitious trauma injury nor is that finding necessarily significant to the issues in this case.

Plainly, this was a case with conflicts that could have been reconciled differently. The hearing officer had the opportunity to observe the demeanor of testifying witnesses, however. 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 this was the case here, for either injury or disability, and we affirm the decision and order as not being against the great weight and preponderance of the evidence.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens

Appeals Judge