APPEAL NO. 000771

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 March 21, 2000. The hearing officer determined that the compensable injury sustained on _____, does not extend to include an injury to the lumbar spine nor was the spine aggravated by the accident that occurred that day or treatment therefor. The appellant (claimant) appealed, arguing that her back was injured when she fell on _____, and she argues facts she believes support this. The respondent (self-insured) responded, arguing facts supporting the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

The claimant was employed as a fourth grade teacher by a school operated by the self-insured. She had had a previous low back injury that occurred in _____, and for which she had an MRI on June 5, 1998. The MRI found severe central canal stenosis at L4-5, and moderate stenosis at L3-4 and L5-S1. There were bulges at all levels as well as degenerative disc disease. Claimant was 65 years old at that time.

On _____, the claimant tripped over something on the ground and fell forward, striking her head on a wall, and injuring her right knee and shoulder. She was treated thereafter for these injuries. Claimant also contended she hurt her back, but did not mention it because she was "focused on" the greater pain in her shoulder and right leg. Her treating doctor was Dr. N.

Claimant also testified that she first experienced low back pain in September or October, while riding an exercise bicycle in connection with her therapy. She said that she mentioned this to Dr. N, but he said he could not treat the back because it was not part of her injury. Dr. N certified that claimant was at maximum medical improvement on December 17, 1998, with a 12% impairment rating, none of which included the low back.

Dr. N first recorded complaints of back pain on February 18, 1999, when he speculated that claimant=s leg pain might be radicular in origin. An MRI done May 18, 1999, found essentially the same conditions as the earlier MRI, although it was noted that a disc protrusion had occurred since that date at L4-5 which impinged on the nerve roots in that area.

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). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and

conflicts in the evidence. Garza. 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).

In this case, the hearing officer could have believed that the claimant's low back, if aggravated in her fall, would have manifested itself earlier. Furthermore, she need not accept testimony that claimant was "focused on" some injuries to the exclusion of others, when it would seem to behoove an injured worker to make a doctor aware of all areas of pain from the outset of treatment.

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 is the case here, and affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge