APPEAL NO. 001225

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 April 25, 2000. The hearing officer determined that the compensable injury sustained on _____, does not extend to include the cervical, thoracic, and lumbar spine; and that the respondent (carrier) did not waive its right to contest compensability of the claimed injury by not contesting compensability within 60 days of being notified of the claimed injury. The appellant (claimant) appealed, contending that the hearing officer erred in making those determinations and that the claimant proved to the contrary beyond the preponderance of the evidence. The carrier responded, contending that the hearing officer's determinations were correct and supported by the evidence.

DECISION

Affirmed.

The claimant worked as a sewing machine operator for (employer). The claimant said that she was working and injured her arms and hands on _____. The mechanics of that injury were not described in testimony. However, medical records indicate that this was a repetitive trauma injury. She had right carpal tunnel release surgery on July 22, 1998. The claimant said that it was not until after she returned to work in September 1998 that her neck, back and shoulder began to hurt her. She said she reported this to the company nurse. The claimant was treated by Dr. A, who had an MRI performed when the claimant reported these problems. She was asked exactly what she told Dr. A about these problems and said that she questioned why the pain radiated up to her arm, shoulder and neck and was told that it was because she was working.

The claimant changed treating doctors to Dr. M in February 1999; he certified that she reached maximum medical improvement on April 14, 1999, with a 19% impairment rating which included the cervical area. The Report of Medical Evaluation (TWCC-69) was issued on May 10, and the carrier disputed the inclusion of the cervical area on May 18, 1999.

Physical therapy records following the claimant's surgery make no mention of neck, shoulder, or back pain. Medical records following the claimant's return to work indicate a brief chart note on September 24, 1998, of some temporary upper right trapezius pain. A typed progress note of that day recorded only right wrist pain and a recommendation that she sew for only half a day instead of a full eight-hour day. A September 28 chart note records that the right shoulder and cervical area were massaged. Dr. A's reports thereafter only record right hand and elbow pain with repetitive activity.

The claimant was re-evaluated by Dr. AT on January 25, 1999, and he noted developing right-handed problems. He examined her neck and found range of motion within "functional" limits but noted she had some cervical pain on certain movements. The

claimant was taken off work on February 18, 1998, for bilateral carpal tunnel syndrome (CTS) and bicipital tendinitis and impingement in the right shoulder.

Dr. M's reports that are in evidence describe the claimant's neck as part of the injury for which she was initially treated. Dr. M also stated in a June 14, 1999, letter that the person who previously provided the claimant with services "injured her more" which is why she changed to Dr. M. He explains in a later letter that neck problems can develop from bilateral CTS because it is "the same nervous tissue."

WAIVER ISSUE

The hearing officer's finding that there was no written notice of injury prior to Dr. M's TWCC-69 is supported by the record. However, on March 13, 2000, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) was promulgated and the previous Rule 124.6 was repealed. Rule 124.3(c) provides that the requirement of Section 409.021 to dispute the compensability of the injury within 60 days does not apply to matters of "extent of injury." We have held that the Texas Workers' Compensation Commission consequently may not, at any stage of the hearings process, impose a waiver for extent-of-injury questions after the effective date of the rule. Texas Workers' Compensation Commission Appeal No. 000784, decided May 30, 2000. Accordingly, the hearing officer's conclusion of law that the carrier did not waive the right to dispute extent of the claimant's injury into her neck and back is supported by the new rule and the record.

EXTENT OF INJURY

We do not agree that the hearing officer erred in determining the extent of 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).

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). Dr. M's opinion could be discounted by the hearing officer

because he stated that the cervical injury was present from _____, when other medical records do not support this.

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 we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Robert E. Lang
Appeals Panel
Section Manager