APPEAL NO. 001253

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 May 2, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. Claimant appealed, arguing that his doctor's evidence proved his case. Claimant impugns the impartiality of the hearing officer. The respondent (carrier) responded, arguing forcefully that allegations of improper conduct are without merit. The carrier recounts evidence of contradictions in claimant's case and in support of the determination of the hearing officer.

DECISION

Affirmed.

The claimant was employed by (employer) on January 17, 2000, the date of his alleged injury. Because the first witness to testify was the treating doctor, Dr. L, D.C., the account of events leading to the injury was somewhat unclear. Initially, Dr. L said that it was his understanding that the work claimant had been doing from four to eight hours ("all day") on the job caused him to assume a bent posture putting torsions into the spine. However, he later said that it was his understanding that claimant's back condition resulted from "an accident" rather than repetitive trauma. Dr. L said that claimant did not relate to him that there had been any sudden pop.

Dr. L said that it was his understanding that claimant's history of back injury involved a 10-year-old occurrence, but that it had subsequently come to light that claimant had been treated and released in December 1999 for lumbar spasms. Dr. L said he took claimant off work on January 17 and he remained off work. Dr. L characterized injections as a treatment option that had apparently not yet been tried but that he was going to pursue. He agreed that the disc dessication indicated on an MRI was preexisting, but that an annular tear was most likely a result of the accident. Dr. L agreed that annular fissures could be associated with disc dessication, however. Dr. L said he had heard of studies relating to how long a strain or sprain would resolve without treatment, and that he believed the time period referenced in such studies was six to eight weeks.

Dr. L agreed that a history was important at arriving at a diagnosis. Upon cross-examination, it was shown that claimant indicated on his history sheet that he had low back and neck pain during the previous six months. Dr. L said he did not ask him the duration of such pain.

Dr. L had not previously treated claimant and said he was referred because he was enrolled in the health plan covered by claimant's regular health insurance plan. There was a release signed by claimant ancillary to a request for medical records from (Hospital P). Dr. L was at first unable to explain why he sought records from Hospital P and what

treatment claimant received there. However, it was later clarified that this related to a DWI charge that claimant contended resulted from the effects of his pain medication.

Claimant said that his prescriptions were given to him by his family doctor, Dr. J, because Dr. L did not have prescriptive authority. Dr. L testified that he had no notes from Dr. J and did not know how long such the medications were being given.

When claimant testified, he described installing under counter lights that caused him to bend a certain way, and opined that at sometime he "must have wrenched it". While he was sore, his back felt okay when he left at 2:30, but worsened throughout the evening at home. He called his supervisor, Mr. A, on Monday and told him he was having extreme back pain and was going to the doctor. He did not tell him that it was related to work at that time because he was not sure that was the problem. He reported the matter as a workers' compensation claim to another person the next day.

Claimant said that he injured his lower back and had shooting pains down his leg. He said he did not injure his mid back or neck. Claimant said he did not realize he injured himself until the passage of 24-48 hours. He said that on the day in question, he joked around with Mr. A about having back pain.

Mr. A testified that claimant worked for his company for six months. He said that he worked with claimant on the day in question and there were no jokes or reports about back pain. He said that on the Monday after the accident, claimant called and said he was going to the doctor for back pain and was not coming to work. Mr. A said he knew through voice mail by January 19th that claimant contended a work-related injury.

Dr. J's records for December 13, 1999, state that claimant pulled his back while working on a ladder. He called Dr. J's office on January 17, 2000, stating that he pulled his back worse than before.

On April 25, 2000 claimant underwent an independent medical evaluation by Dr. S, on April 25, 2000, who diagnosed low back strain and resolved right sided sciatica. He said assessing etiology of claimant's pain was difficult. He did not believe that claimant's line of work would cause injury to the spine. Dr. S opined that he was capable of performing the duties of an electrician at the medium-duty level subject to a 50-pound lifting restriction and while wearing a back belt.

A friend who claimant said was with him all weekend and Monday morning wrote that claimant began complaining of back pain after arriving home Saturday and it worsened throughout the weekend.

The hearing officer is the sole judge of the relevance, the 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 hearing officer may consider the knowledge a doctor has of past medical history in evaluating his conclusion that a condition is or is not work-related, especially when that doctor identifies history as an important consideration, as was the case here.

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 evidence was not unilaterally in favor of either side in this case, and it was the responsibility of the hearing officer to determine the most plausible sequence of events. He could conclude that it was more liklely than not that a work related back injury would have been reported to Mr. A in the January 17th telephone conversation. He could believe that the pain manifested over the weekend was more likely than not related to claimant's earlier episode of pain the prior month.

In conclusion, we observe that while it is no doubt frustrating to a party to lose a case in a CCH, the fact that one party prevails does not establish bias against the other party. The record here frankly presented contradictions and conflicts that had to be weighed by the finder of fact, and which required him to believe or disbelieve witnesses. When there are intervening weekend periods between the occurrence of an accident and its reporting, and where the initial report to the employer does not indicate that the condition is work-related, the alternative conclusion that the injury did not occur at work is a legitimate one for a finder of fact to consider, and the credibility of the witnesses and the thoroughness of the history given to the treating doctor are important.

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:

Kathleen C. Decker
Appeals Judge

Alan C. Ernst
Appeals Judge