APPEAL NO. 001270

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 9, 2000. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to or include the cervical, thoracic, or lumbar spine and that the claimant had no disability.

The claimant appeals and argues that his medical evidence clearly links his back problems to the undisputed accident that occurred. He argues that the undisputed evidence also established resulting disability. The carrier responds that the decision is supported by the evidence, which includes a long gap between the date of the accident and medical treatment for the claimant's injuries. The carrier argues that the claimant merely bruised his leg when he stepped into a hole.

DECISION

Affirmed based upon our standard of review.

From all of the testimony and evidence, the following sequence of events was established. The claimant was employed as a foreman by (employer) and was working at the site of a client company in (City 2), Texas. It was undisputed that on _____, in front of Mr. S, a supervisor for the client company, the claimant turned around and inadvertently stepped down into a hole that was at least 18 inches deep. He said that he fell backwards onto some posts. Mr. S disputed that he fell backwards although there were posts in the area around the hole. Mr. S stated that the claimant stepped right up out of the hole and said he was a little stunned, but appeared to be alright. Mr. S said the claimant continued to work without any apparent problems.

The claimant said he twisted as he went down and had pain not only in his leg but throughout his back. He said that Mr. S just laughed off the incident. The claimant agreed that he kept working through October 29th because he needed the money, even though he was in pain. He contended that Mr. P, the district manager for the employer in City 2, discouraged him from seeing a doctor because he was only bruised.

There was conflicting testimony about an occurrence on October 29. The claimant denied that he attempted to "pull" his crew off the client company's job on that day. He agreed that he had two beers to drink at lunch that day, and that there was some sort of discussion with Mr. S about the claimant's having too much to drink. Mr. S said that the claimant had attempted to "pull" his crew in order for them to go home during the weekend, but that the client company wanted the work to continue through the weekend. He said that the claimant left the job site and, when called to return later in the day, came back drunk and belligerant. Mr. S said that he called Mr. E, one of employer's supervisors in City 1 to complain, and that the claimant was subsequently taken off this job. The claimant said he returned to City 1 and reported his injury to Mr. E on November 1.

Mr. E testified that sometime previous to this, there had been some discussion with the claimant about working on a job in Tennessee. The claimant contended that Mr. E offered him this job during their discussion but that he declined to go in order to get physical therapy between October 30 and November 15. Mr. E said that no injury was reported to him by the claimant and the claimant merely turned in his keys and other work-related items. The claimant said he was told not to file a workers' compensation claim or "make waves" by Mr. E, which Mr. E also denied.

The claimant said that he thereafter consulted with a lawyer, who ultimately did not take his workers' compensation case, but did refer him to a chiropractor, Dr. G. Dr. G first examined the claimant on November 15, 1999, and found decreased and painful motion in the lumbar, thoracic, and cervical spines. The claimant was examined by Dr. P, on December 23, 1999, and diagnosed with strains and sprains at all three spinal levels. MRI scanning was recommended for the spine and right knee. Dr. P's understanding of the injury was that the claimant fell in a hole "three feet deep."

X-ray reports noted spondylosis throughout the claimant's spine. A right knee x-ray was unremarkable.

The claimant was taken off work at various points throughout his treatment. He said that he had returned to work on February 6, 2000, but had disability to that point. The claimant was asked if he thought he could have performed the supervisory job in Tennessee even though injured and his response was not entirely clear, but attributed his nonacceptance of the job primarily to receiving physical therapy. However, there was no documentary evidence that the claimant received any physical therapy prior to his November 15 appointment with Dr. G.

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).

On one hand, the hearing officer was faced with a mechanism of injury, falling in a somewhat deep hole, that would be consistent with a back strain. On the other hand, she also had to evaluate the long period of time between the claimant's quitting work and his seeking medical treatment, Dr. P's apparent misunderstanding of the depth of the hole in question, the effect of the personnel dispute between Mr. S and the claimant that occurred on October 29, and the subsequent assertion of injury to other body parts than the knee.

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 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:

Kathleen C. Decker
Appeals Judge

Alan C. Ernst
Appeals Judge