APPEAL NOS. 001564,
001747 AND 001748

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 June 21, 2000. At issue were three dates on injury that the claimant had claimed, as well as whether there were associated periods of disability. The hearing officer determined that the claimant did not sustain a work-related injury on any of the dates under review and, as he did not have a compensable injury, there was no associated disability.

The claimant has appealed and argues that any earlier medical treatment he had for his back was preventive care only and did not indicate a preexisting condition. He argues that the medical evidence supported his contentions. The carrier responds that the record supports the determinations of the hearing officer.

DECISION

We affirm.

The claimant was employed to do welding and "make ready" work for (employer). He assisted in the manufacture of heavy restaurant kitchen equipment. The claimant said that his work was very strenuous, that he worked long hours, and that he was often called upon to do other people's work because they were understaffed. The claimant said that relationships at work had been strained since around September 1998 when he had "turned in" several supervisors at his company for theft.

The claimant's theory of injury appeared to be both specific and repetitive trauma and he also indicated that he had broken down what was one injury into three components because he was so instructed by the Texas Workers' Compensation Commission (Commission). The claimant said that on June 9, 1999, as he was lifting a heavy piece of equipment, he felt pain in his left shoulder straight to his hip. He said that this incident was witnessed by another coworker. He also stated that his pain was due to lifting about 30 items over the course of that day. The claimant went to Dr. N, with whom he had treated 15 years.

There were two earlier dates on injury under review at the CCH. The claimant said he reported a hip injury to his supervisor, Mr. H, on April 21, 1999. He said that this occurred from pushing equipment, but that he was also "constantly" pushing and pulling. Mr. H told him to return to work and let him know if he needed to see a doctor. On May 5, 1999, the claimant contended he had strained his back picking up a liner. He said he told Mr. H that he had "hurt it again."

The claimant said he claimed all these injuries to the Commission in "one lump sum." The date of injury he selected was May 1, 1999. He said he chose this date because the management of the employer refused to cooperate with furnishing him with

dates that he had reported injuries to them. He said that he was instructed by the Commission to file on each claimed injury. The claimant said that he felt his inability to work, which began June 10, 1999, actually related to his May 1999 injury.

The claimant contended that Dr. N took him off work due to his back. However, a letter written to the employer by Dr. N on June 11, 1999, recommends that the claimant should be off work pending psychiatric evaluation for his anxiety. A form that Dr. N filled out on June 23, 1999, for Family and Medical Leave Act leave stated that the claimant should not work due to anxiety and stress. The claimant denied he was ever taken off work for stress. A cervical MRI of July 27, 1999, was reported as normal.

The claimant's earlier records from Dr. N show that as far back as 1994 he was treated for various aches and pains, including pain in his shoulders and back. He was examined at various times and found to have muscle spasms and tightness. Such pains were frequently noted as related to emotional stress, for which the claimant had also been treated a number of years. The claimant had taken various medications for pain and anxiety, including Soma, Elavil, Valium, Vicodin, and Xanax, during years prior to the dates of injury under review. The visits to Dr. N appear not to have been in the context of regular physicals but to seek relief from specifically claimed pains.

On January 25, 1999, the claimant was seen by a neurosurgeon, Dr. W, on referral, and Dr. W diagnosed chronic neck and back pain and recommended further evaluation. There is documentation in the record showing that precertification was sought by an area hospital for a cervical and thoracic MRI in January 1999 for chronic pain that the claimant reported, apparently stemming from a motor vehicle accident on January 26, 1998.

Dr. N wrote a letter on March 31, 2000, stating that facts related to him about a May 1, 1999, injury indicated a work-related basis for the claimant's back problems. Dr. N observed that the claimant had been treated in January 1998 for neck pain but elected not to file a claim, although he attributed his pain to hours of wearing a heavy welding helmet. Dr. N stated that he took the claimant off work to receive treatment for emotional distress in order to more effectively treat his physical injuries. Dr. N noted that the claimant had been found through objective testing to have carpal tunnel syndrome and would require surgery. He stated that the claimant also suffered from fibromyalgia, lumbosacral strain, and pain in his neck, hip, and shoulder.

The claimant at the CCH characterized his earlier medical visits as preventive, just to be checked out. However, in his recorded interview with the adjuster, he noted that he had been treated for back pains before due to the type of work he did day in and day out. The claimant said that his fault in this instance had been not reporting his injury earlier and continuing to work through pain until he could not stand it anymore.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d

98 (Tex. 1977). To the extent that the claimant contended his problems related to repetitive trauma, we note that Section 401.011(36) defines repetitive trauma injury as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ).

The facts set out in a medical record are not proof that a work-related injury in fact occurred. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.- Texarkana 1977, no writ). 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). 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.). Finding the

hearing officer's decision to be supported by the evidence on all appealed matters, we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge