APPEAL NO. 001656

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 June 28, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability. The hearing officer cited her evaluations of the credibility of the witnesses as paramount in reaching her decision. The claimant appealed, arguing that he proved the facts of his injury and disability. The respondent (carrier) responded by highlighting the testimony which supports the hearing officer's decision.

DECISION

We affirm the decision.

The hearing officer has done an exemplary job of setting out the evidence and the factors pertinent to her decision. We cannot improve upon her recitation of the facts and, accordingly, specifically incorporate the hearing officer's summary of facts into our decision here. We will only add that neither the claimant, his father, nor the manager for the employer were actually sure if the claimant had been paid for the alleged day of the injury. The manager testified that the claimant's father would have been responsible for turning in the timesheet. As noted in her decision, the hearing officer often had to resolve contradictory testimony and contend with leading questions or questions assuming facts not in evidence, as well as nonresponsive answers to questions or apparent misunderstandings of the translated testimony of three witnesses.

We have reviewed the record and find that the decision of the hearing officer is supported and is not against the great weight and preponderance of the evidence. 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). 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). 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). There are conflicts in the record but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. The hearing officer has described the considerations that influenced her in her judgment of the credibility of the witnesses and all of these judgments were her responsibility to make as trier of fact.

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

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge