APPEAL NO. 001875

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 July 13, 2000. The issues at the CCH were whether the respondent, who is the claimant, sustained a compensable injury in the form of an occupational disease, and whether she had disability from that injury and, if so, the periods of time involved.

The hearing officer determined that she sustained a cervical condition as an occupational disease (date of injury being _____) and that she had disability from January 24 through June 26, 2000.

The carrier has appealed, and argues that the evidence was insufficient to prove a cervical injury. The carrier argues that cervical pain resulted from migraine headaches, not the other way around. The carrier also argues that if there was an injury, it was at best a soft tissue injury that would not prevent work for five months. But the carrier asserts that there is no disability due to the lack of a compensable injury. The claimant responds by arguing that conflicting evidence was resolved by the finder of fact and should not be set aside absent a great weight to the contrary.

DECISION

Affirmed

The hearing officer has fairly summarized the testimony. As he stated, the claimant was employed for three years by (employer), as the assistant business manager, where she was on the telephone 75% of her day while also on the computer. She did not have a headset but had to hold the telephone between her head and shoulder while talking and working with her hands. She said that she first noticed headaches and numbness in her arms during October 1999. She went to her regular doctor who diagnosed migraine headache.

The claimant continued to be treated but became dissatisfied with the treatment and medication after a particularly severe ten-day episode in January 2000. She had only had two headaches after beginning treatment with Dr. B. She said that when she was feeling ready to return to work in early April, she had a relapse. The claimant continued with work hardening therapy. She has not had problems since her return to work because she uses techniques she learned in work hardening. Apparently, a headset had still not been furnished so she made it a point not to use the computer at the same time that she was on the telephone. The claimant said that there was also an extra person working in her office compared to when she was injured.

As the hearing officer has noted, the claimant's treating doctor, Dr. B, testified that he came to believe that the claimant's headaches were actually cervicogenic in nature, manifesting "as a result of structural or tissue changes" that had occurred in her neck. He said that he did consider that members of her family had a history of migraine headaches, but did not believe that her problems were genetic in origin. Dr. B said he questioned the

claimant about her headaches with respect to the work week in order to analyze and compare the severity and onset of the headaches to her work activities. Dr. B said that his diagnosis was cervical strain; he recalled that the MRI of her neck showed some bulging or herniation (he could not recall which). Dr. B took the claimant off work on _____, and returned her to work on June 26, 2000.

Dr. B agreed that when the claimant saw Dr. F, a referral doctor, in March, she was improving at the time. He disagreed, however, that she would have been symptom free at that time but may have been having "a good day". On March 15 and 27, 2000, Dr. F characterized the claimant's cervical strain and associated headaches as resolved. An MRI of the cervical spine showed bulging but without significant effect on the spinal cord.

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). As we review the record, the hearing officer's decision is sufficiently supported. Although different inferences could be drawn as to the period of disability caused by the injury, the decision is not against the great weight and preponderance of the evidence. We accordingly affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge