APPEAL NO. 001964

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 25, 2000. The issues at the CCH were whether the respondent, who is the claimant, sustained a compensable injury on or about _____, and had disability from that injury. There was also a reported issue on the date of the injury, added by agreement. The hearing officer held that the claimant injured her right wrist and right knee when she tripped and fell in a storage room. She further held that the claimant had disability on February 14, and then from February 16, 2000, through the date of the CCH.

The appellant (carrier) has appealed, assailing the credibility of the evidence and arguing that the decision was against the great weight and preponderance of the credible evidence. The claimant's response emphasizes the role of the finder of fact in reconciling the evidence and argues that there is sufficient support in the record for the conclusions drawn.

DECISION

Although different inferences could be drawn from the evidence, the decision is not reversible according to our standard of review and is hereby affirmed.

All dates are for the year 2000 unless otherwise stated. The claimant was employed in the hardware department of (employer), and said that on February 8 she tripped and fell over a display rack on the floor of the storage room while retrieving merchandise to put on the sales floor. She said she landed on her right knee and braced her fall with her right hand. The claimant said that this occurred around 3:00 to 3:30 p.m. The claimant asserted that she sustained injuries and pain at this time to both areas, but felt that these problems would resolve. The claimant's mother testified that the claimant came home in pain and told her of the accident, and that the claimant did not do anything over the weekend to hurt herself.

When the wrist and knee became markedly swollen and worse over the weekend, the claimant sought medical treatment on Monday, February 14. She showed up at work wearing a soft brace on February 15; the testimony of the store manager, Mr. L, was that when he asked the claimant what had happened, she responded that she had hurt her wrist, possibly fractured it, and would have to see a specialist the next day. Mr. L said there was no indication that the claimant's injury occurred at work until he received a call from the doctor's office the next day. A coworker, Mr. O, said that the claimant told him that she had fallen in the storeroom and fractured her wrist the previous Friday. Mr. O testified that he offered to give a statement to Mr. L because of his belief that an accident like this would have been reported right away.

The claimant was found to have a fractured wrist and knee derangement. She said she might require surgery for both conditions. The claimant was taken off work and remained off work for the periods of time found by the hearing officer to constitute disability.

Both the claimant and Mr. L agreed that they met for about 20 minutes on February 10 to discuss some matters related to the claimant's performance of her job which needed improvement. They met again briefly on February 11 to review the claimant's questions about some of those matters. There was no indication that disciplinary action was, or was about to be, taken.

A sworn statement was given by a customer of the store, Mr. R, who operated a funeral home close by. He said that he noticed the claimant on February 8, at around 4:15 p.m., rubbing her wrist, apparently in pain, and when he inquired if she was feeling okay, she told him she had fallen in the storage room but would be alright. Mr. L testified that records of the store indicated that only one person from the funeral home had been in that day to pick up supplies and it was not Mr. R. However, he agreed that one person could sign for the supplies even if two people had come to the store.

A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.- Houston [1st Dist.] 1987, no writ). Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984).

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). 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). Although different inferences could be drawn, even from common experience, as to the likelihood of a broken wrist having even a few days delayed manifestation, the hearing officer evidently chose to believe the claimant's explanation as well as the statements of Mr. R and the claimant's mother. She could note that the history of events leading to the injury was consistently made early on to health care practitioners involved with treatment.

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 there may be conflicting evidence alone is not a basis for reversal. Accordingly, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge