APPEAL NO. 002054

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 August 8, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on _____, and had disability from her compensable injury.

The hearing officer held that the claimant sustained an injury to her back by aggravation of a preexisting condition, and that she had disability from this injury from February 29, 2000, to the date of the CCH.

The appellant (carrier) has appealed and argues that the claimant's back pain was a continuation of her previous chronic back problems and did not represent a new injury or an aggravation, and that the reason the claimant was unable to obtain and retain employment equivalent to her preinjury average weekly wage (AWW) was because she was terminated. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

The claimant was employed as a registered nurse by (employer) sometime in January 2000. The claimant said she was injured on _____, as she wheeled an empty but heavy gurney down an incline away from a helipad, after transport of an injured patient, and was attempting to control it so that it would not get away and roll. She said that another nurse commented that this was a "two person job" and she should just let it roll next time. This happened near the end of her 12-hour shift. The claimant said that she worked at least 32 hours a week, and was paid $24.00 per hour but did not receive additional benefits or health insurance.

The claimant said that she did not feel immediate pain. Evidence was offered to the effect that the claimant did not "appear" or "look"injured after the gurney incident although the claimant reported her injury the next day. However, witness Ms. P also found the account of how the accident happened to be plausible and agreed that the claimant had been involved in the transport of a patient to the helipad. The claimant said that when she went home she felt "tightness" but began to experience "true" pain the next day, at about a six out of ten level. When she arrived at the employer, she felt pain to about a seven level, with pain radiating down her legs. She sought treatment at the emergency room after completing half a shift and was treated for lumbar strain and sent home. The claimant said she related her problems to the gurney incident. She did not recall if she worked on February 26 but agreed that she was first unable to work due to her injury beginning February 29.

The claimant was next examined at a medical clinic by Dr. H. This was a doctor who had previously treated the claimant for low back pain. She said that Dr. H considered

that she had an exacerbation of her back problem due to the gurney incident. Dr. H recommended an MRI and physical therapy, which were not authorized by the carrier. However, a February 25 x-ray reported osteoporosis and moderate lower lumbar spondylosis at L4-5.

The claimant was terminated on February 28 for reasons described as excessive absenteeism in that the claimant did not attend new employee orientation within 30 days of her date of hire. Another document relating to the termination noted that the claimant missed time due to illness.

The claimant had a previous work-related low back injury in May 1999. Her treating doctor was Dr. G, who treated her with steroid injections that were helpful. She did not have surgery (she had had a laminectomy in 1971). Dr. G released the claimant to light duty which meant no reaching or lifting of heavy patients, and doing things with assistance. The last time that the claimant saw Dr. G was when he performed her impairment rating in November 1999. Her only further treatment for her back was medication, taken off and on when needed. She said that Dr. G declined to treat her for her _____, injury because it was a separate injury.

Records from Dr. G's office for treatment of her 1999 injury document that she began to have back problems five years before. She was also treated in an emergency room in January 1999 for back strain.

The claimant was certified at a preemployment physical on January 10, 2000, as able to handle the duties of an on-call registered nurse for the employer. The claimant characterized this preemployment figure as rigorous and impressive. The claimant said that her job for the employer was not on a light-duty basis.

The claimant said that her symptoms after the _____, injury were different than those from her May 1999 injury. She said that the reason she was unable to work after her termination was due to agony. The hearing officer has summarized the claimant's brief episodes of work at later points after her injury, none of which were for pay equivalent to her preinjury AWW.

A claimant's testimony alone is sufficient to establish that an injury has caused disability. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). 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, 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). Whether the claimant's condition represented a continuation of back problems, or an additional strain or aggravation of an underlying degenerative problem, was for the hearing officer to decide. The fact that an injured worker has previously experienced a lumbar strain does not make every subsequent strain a mere continuation of a preexisting condition. On the issue of disability, the hearing officer could evaluate the articulated reason for the termination, the timing of that action with respect to the claimant's injury, and her testimony as to the reason she was unable to work or retain work she obtained. 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 have reviewed the record and while different inferences could be drawn, we cannot agree that the hearing officer's decision is not supported by the evidence. We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge