APPEAL NO. 002074

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 14, 2000. The issues at the CCH were whether the appellant, who is the claimant, sustained a compensable injury on _____, and whether he had disability from that injury and, if so, the periods of time involved.

The hearing officer determined that the claimant did not sustain a compensable injury and did not therefore have disability. She found as fact that he was unable to obtain and retain employment at wages equivalent to his preinjury average weekly wage for the period from September 4 through 9, 1999.

The claimant has appealed, arguing that this decision is against the great weight and preponderance of the evidence. The claimant recites evidence that he believes supports a decision in his favor. The respondent (carrier) responds that the decision should not be set aside, and recounts evidence that it believes supports the hearing officer's decision.

DECISION

Affirmed.

The hearing officer has summarized the evidence fairly and we shall incorporate that summary by reference here. As noted by the hearing officer, the claimant was working for (employer) shoveling dirt in a tunnel on _____ (all dates are in 1999 unless otherwise stated) and says he began to notice some irritation with his eyes. He was unable to open his eyes during the night and went to the emergency room (ER) the next morning, around 10:00 a.m., and again the next day (Sunday). The claimant said tubes were put into his eyes and they were flushed out. It was the claimant's belief that he got a foreign substance in his eyes while in the tunnel, and that this caused blurring which lasted to the date of the CCH. He was wearing safety goggles at the time he was filling in the dirt, but said that there were small holes at the top and sides of the goggles that would allow foreign matter to enter.

Concerning the claimant's work history, he said he was off work after reporting his injury to his employer on the Monday following the incident. He returned to work from September 13-16, and then was released at his request on September 30. He said he did not find a job until November 27.

The bookkeeper for the employer testified that the claimant had last called work on September 21 to say he would report to work that day, but never showed up again. The determination was made on October 12 to terminate his employment for abandoning his job, retroactive to September 22.

A portion of the medical records submitted consists of notes in handwriting which are partially legible; the record was not favored with a transcription. The ER typewritten report from September 4 notes no foreign bodies in the eyes but abrasions on each cornea. The claimant also had bilateral conjunctivitis. His eyes were patched for 24 hours and ointment prescribed. The next day, his condition was characterized as resolving. On January 5, 2000, Dr. J, to whom the claimant was referred by his attorney, diagnosed chemical conjunctivitis.

It appears that the claimant initially took the position that he was exposed to a chemical; on September 30, Dr. A, an eye doctor, considered this history and deemed it unlikely that a single exposure would cause continued problems. Dr. A changed the claimant's medication, in case his continued mild irritation was due to the topical drops he had been using. He opined that the claimant could have had a viral conjunctivitis.

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). While the hearing officer in this case could have concluded that the abrasions on the claimant's cornea in fact resulted from some earlier presence of dirt in his eyes, the fact that she resolved this evidence to a different conclusion does not in and of itself render the decision reversible. 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. 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:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge