APPEAL NO. 002098

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 4. The record was closed on August 9, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to his low back and a burn on the right buttock, and whether he had disability from his injury. The hearing officer held that the claimant sustained a low back injury in conjunction with his compensable injury of _____, and that he had disability from his injury for the period from April 4 through June 1, 2000, but that disability beyond the June 1st date had not been proven.

Only the disability issue is in contention on appeal. The claimant has appealed and argues that he has not been released from active care. The claimant argues that if he could not provide further medical records to establish an inability to work, this was due to the dispute over compensability. The claimant argues that there was no evidence that his condition was any different after June 1st than on that date. The claimant asks that the decision be reversed as against the great weight and preponderance of the evidence. The respondent (carrier) responds that there is no basis for setting aside the hearing officer's decision, which is supported by the record.

DECISION

We affirm the hearing officer's decision.

The claimant testified that he injured his low back in conjunction with lifting heavy bags of materials on _____. Detection of this condition was deferred until April 4, 2000. In the interim, the claimant worked light duty for a month until February 4, 2000, and then, he said, he went to Mexico. The claimant said he changed his treating doctor away from the employer's clinic, and that his new treating doctor was Dr. C. Asked if Dr. C had placed him on restricted or full duty, the claimant testified that Dr. C had not discussed work status with him at all. The claimant said that a doctor's report he brought back from Mexico set out his ability to work. The claimant said he was diagnosed with a herniated disc in Mexico, but most medical records show a working diagnosis of lumbar strain.

Dr. C's Initial Medical Report (TWCC-61) projected an ability to return to limited work on June 1, 2000, and maximum medical improvement on July 1, 2000. A narrative report dated April 4, 2000, explained this in greater detail, and stated that the claimant was totally precluded from work for the period from April 4 through June 1, 2000. Dr. C noted that at that point, further evaluation to return to work would be undertaken. A Work Status Report (TWCC-73) was also completed on April 4, 2000, and it said that the claimant could return to restricted work as of June 21, 2000, and that he could work without restrictions by July 1, 2000. Dr. C's last regular case notes are dated May 18, 2000, and note that the claimant would be going to Mexico for two weeks. Also, the claimant argued in his appeal that the dispute limited the claimant's ability to obtain medical evidence; we note that Dr.

C treated the claimant on a very frequent basis from April 4 through May 18, 2000, according to records in evidence.

Asked how he felt, the claimant said his back still hurt him. He was not asked, and did not testify, as to his own belief as to his ability to work. Mr. B, the employer's safety manager, testified that the claimant had not been terminated and light- duty work would still be available through the employer.

The burden of proof was on the claimant. 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). However, in this case (perhaps because the parties were concentrated on whether the low back was part of the injury), there was no testimony from the claimant that his low back strain caused an inability to work. The inability to work from a herniated disc or lumbar strain is not self-evident. There must be some evidence that such causes an inability to obtain and retain employment equivalent to the preinjury average weekly wage. While a light-duty status is some indication that disability may continue, it is not dispositive on this issue.

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 trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). 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). The hearing officer in this case credited Dr. C's statements on the expected extent of the effects of the claimant's injury, which was essentially the only medical evidence presented on this issue. 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 decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge