APPEAL NO. 002146

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 17, 2000. The issues at the CCH were whether the respondent, who is the claimant, sustained a compensable injury on _____, and whether he had disability as a result of such injury. The hearing officer found that the claimant had an injury and disability for the period from October 9, 1999, through June 11, 2000.

The appellant (carrier) appealed, arguing that there is no evidence, or insufficient evidence, of causal connection between the claimant's back condition and the incident that occurred on _____. The carrier argues that there is no disability because there is no compensable injury. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

The hearing officer has set out a thorough discussion of the evidence, which we incorporate by reference here. As she noted, the claimant contended that he injured his back while pulling a heavy bin of dough away from a door. The claimant was 62 years old. The injury occurred around 2:40 a.m., during his night shift. He was able to continue working throughout his shift but the pain grew thereafter. As the hearing officer noted, a large herniation was found on _____, by MRI. (A previous _____, back pull had been assessed as not significant, with x-rays showing no obvious abnormality.)

The claimant had two back surgeries for a herniated disc (the first in November 1999) and was released to unrestricted full duty on June 12, 2000. Although there was no issue over timely reporting (within 30 days), the carrier developed evidence on the fact that the injury was not immediately reported or that there was inconsistency in the claimant's statements about reporting.

The carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) states that it first received written notice of injury from the employer on November 1, 1999. Mr. N, the claimant's supervisor, denied that the claimant reported a back injury at work in October. Mr. N did agree that when the claimant called in on _____ to tell him he was not coming in (beginning at 10:00 p.m. that night), the claimant told him back pain was the reason but did not say that it was due to work. Mr. N did not inquire as to whether the injury was work related so as not to encourage "worker's comp." The claimant called in about an hour before his shift would have started.

Essentially, the carrier's appeal recites reasons why it disagrees with the inferences drawn by the hearing officer. However, 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). Whether or not a claimant told others immediately after the injury occurred or later, is merely a fact issue for the hearing officer to consider and is not dispositive one way or the other of whether an injury occurred.

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).

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 is the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge