APPEAL NO. 002195

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 30, 2000. The issue at the CCH was whether the compensable injury extended to the appellant=s (claimant) right hip. The hearing officer found that the injury of _____, did not include her right hip.

The claimant has appealed, and argues that she proved her case by a preponderance of the evidence. This evidence is recited in the appeal. The respondent (carrier) responds that the evidence supports the finding that no physical damage to the right hip occurred in the course of the accident.

DECISION

We affirm.

The claimant was employed by (employer). On _____, the claimant was standing with her left foot planted in between some seats, when she heard someone call her name indicating that a beverage cart was headed her way. The claimant said that she raised her right foot to get it out of the aisle and was struck directly on the foot by the cart, jamming her right knee into the armrest. The claimant also asserted that she hit her head on the overhang. The claimant said she had considerable pain throughout her entire right lower side.

The claimant was initially treated by the company doctor, Dr. S, to whom she said she had described the entire range of her pain. Therapy and treatment notes from Dr. S's clinic describe pain in the claimant's right knee.

Her doctor, Dr. P, described the mechanism of injury involving a blow to her right ankle which twisted her leg, knee, and hip on that side. From this mechanism of injury, he concluded that her hip was hurt at the same time, although he agreed that his treatment concentrated on her right knee. Dr. P had treated the claimant since September 15, 1999. His report of that date noted right ankle and knee range of motion (ROM) restrictions. However, he also diagnosed right hip strain and sprain.

Dr. K, who examined the claimant in a required medical examination, opined that the claimant=s pain might be emanating from the lumbar area, and that she basically had normal ROM in her hip, with pain being centered in the buttock area. He recommended further testing of the lumbar area.

A claim for compensation was signed by the claimant on September 14, 1999. This claimed injury was to the right knee, foot, and leg. The claimant said that her "leg" area included up to her hip. The carrier's articulated reason for disputing the right hip was that it was not mentioned to Dr. S right at first.

We would note that not all injuries may manifest with pain at the outset. Consequently, a hearing officer will be presented with disputes over later payment as "extent of injury" disputes even though, as here, the claimant is contending that the injury occurred at the time of an accident, rather than that it developed from an injured body part.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The facts set out in a medical record are not proof that a work-related injury in fact occurred. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

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).

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:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge