APPEAL NO. 002522

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 September 26, 2000. The issues at the CCH were whether the claimed injury included an injury to the seventh rib, low back, and right lower extremity of the appellant (claimant), and whether he had disability from his injury.

The hearing officer held that the claimant's compensable injury did not include the disputed body areas, and that he had disability for the period of October 15, 1998, through January 15, 1999.

The claimant has appealed and argues that the great weight and preponderance of the evidence demonstrated that he injured the additional claimed body parts. The claimant says that any evidence to the contrary, especially concerning the seventh rib, consists only of inadmissible speculation. He argues that he has not been able to work since the date of the injury and that the case should be reversed and remanded back to the hearing officer. The respondent (carrier) responds that the evidence fails to support a causal connection of the various regions to the claimant's original injury of _____. The carrier recites evidence in favor of the decision.

DECISION

We affirm.

The claimant was employed by (employer). He sustained two injuries within a month. The first, on _____, occurred when a twenty-pound rock fell on him and injured his back left chest wall; a fractured rib was then ruled out. The second injury occurred on _____, when he fell from a backhoe. The distance he fell was about six feet. He hit the left side of his chest again. The claimant said he also had back pain, and indicated the thoracic area. The claimant said his right foot also began to hurt about ten months after the injury. He had not been involved in any other accidents that he thought would have caused his problems.

The claimant said he had worked for three or four months for the employer. He had left his previous employer due to an accident that also involved a right rib injury. After he fell from the backhoe, and did not return to work, but applied for and collected three months of unemployment compensation. He said he truthfully stated that he could work and looked for work, but was unable to find any. The claimant was asked if he thought he could have worked for his employer during this time; he responded that he was given the runaround, asked to appear for work and then told nothing was available. He said he would have been willing to do "line duty," which was light work that did not involve lifting.

The claimant said that at times, his right foot became numb and he would fall down. He said that when he started having such problems, he could not have returned to work at all. The claimant also said that the top of his thigh was "very hard."

The parties agreed that the claimant got paid through November 5, 1998, based on a forty-hour week. The claimant's attorney indicated that he had worked overtime hours on a regular basis so that receipt of this check would not completely preclude a finding of disability. He denied that he worked as a carpenter in 1999 and did not know why his doctor, Dr. C, made such a notation in his medical reports on August 6, 1999.

The claimant said that he had treated with Dr. C before his injuries, but that he began treating with Dr. L, who was located at the same address, after Dr. C returned him to work in November 1998. He did not know why Dr. L was not billing the insurance carrier. However, Medicaid helped the claimant pay his medical bills for over a year. The claimant said the only treatment he was receiving was pills.

Medical records in evidence show that Dr. C returned the claimant to work on November 2, 1998. He treated the claimant for shoulder pain and a fractured eighth and ninth rib (as confirmed radiographically). Dr. L's notes do not document leg pain until sometime in November 1999.

The claimant was examined in a required medical examination on April 4, 2000, by Dr. W. Dr. W noted that the claimant was a poor historian and she had some trouble understanding him. She noted that his leg pain began around six months earlier. She said that this pain was of unknown etiology. As to back pain, Dr. W found probable soft tissue injuries in the spinal area. Her notes to her report express concern that he could have a medical problem unrelated to his compensable injury that was causing underlying weakness of the bone. She stated that the expected time off work due to the effects of his compensable injury (fractured ribs) would be three months.

Dr. S, referred by Dr. L, reported on June 23, 2000, that the claimant's range of motion in the lumbar and cervical areas was normal, and that the reason for his symptoms remained elusive. He thought the claimant might have a nerve entrapment.

The hearing officer could certainly conclude from the evidence that records do not support existence of a back injury as opposed to pain, with the _____, injury as its cause. 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). 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.). The hearing officer's analysis of how

long the accepted and undisputed injury (two rib fractures) would be expected to preclude employment is supported by Dr. W's opinion.

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:

Kathleen C. Decker
Appeals Judge

Robert E. Lang
Appeals Panel
Section Manager