APPEAL NO. 002651

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 22, 2000. The contested issue at the CCH was whether the respondent's (claimant) diagnosis of Meniere's disease, an inner ear condition, was part of his compensable injury of _____. The hearing officer held that it was.

The appellant (carrier) has appealed and discusses at length how this finding is against the great weight and preponderance of the evidence. The carrier points out that the claimant's primary expert witness did not know that the claimant had symptoms of Meniere's disease well before his accident. The carrier also presents a "new" August 16, 2000, medical report that allegedly shows that a dental condition may have been the cause of the claimant's problem. The claimant responds that there is at least evidence of aggravation. The claimant also points out that the document attached to the appeal is dated prior to the CCH and could have been discovered by the carrier's attorney. The claimant points out that there is no evidence that this report was known to him, and that, in any case, it does not state that the problem has gone away.

DECISION

Although other inferences could plainly be drawn, the decision is not against the great weight and preponderance of the evidence and we affirm.

On _____, the claimant, a truck driver, was involved in a truck-to-truck collision in which he sustained several injuries. Most were undisputed. He hit the left side of his head and face on the door frame. Around March 1998, he began to experience dizziness, nausea, and ringing in the ears, primarily on the left side, in addition to headaches he had already reported.

We will briefly focus on some of the discrepant evidence. Over the years, the claimant had been involved in a number of incidents, including a motor vehicle accident in January 1997. He was treated around that time for nausea, vomiting, and dizziness. There was also evidence brought forward that the claimant had even earlier been involved in a motorcycle accident and a shoving incident at a convenience store. The claimant said that he had his gallbladder taken out in March 1997 and this relieved his symptoms of nausea and vomiting. A note from his doctor, Dr. W, D.C., dated November 3, 1997, a month before his compensable injury, shows that he was treated on that day for dizziness, headache, and neck pain.

The claimant said that after his accident, he experienced increased headaches, dizziness, and pronounced ringing and roaring in the ears that he had not had before. He had an objectively tested hearing loss and had a hearing aid installed in his left ear. The claimant was treated and diagnosed with Meniere's disease by Dr. R, who was associated with an area medical school. Dr. R expressed his unequivocal belief that the claimant's Meniere's disease was traumatically induced by the _____ collision. Dr. S, a referral

doctor who also found a causal connection, was also under the clear impression that the claimant's symptoms began with his _____ accident. However, the claimant admitted that he did not disclose to Dr. R or Dr. S any of his previous accidents or experience with similar symptoms. He agreed that this disclosure might be important. On redirect examination, the claimant attempted to explain this failure of disclosure in terms of not being asked his previous history in the details he was asked about on cross-examination. A doctor for the carrier, Dr. M, examined the claimant, was aware of his previous injuries, and stated that there was no relationship between the onset of the claimant's Meniere's disease and his collision. Other medical records characterize Meniere's disease as an ordinary disease of life (an opinion also held by another chiropractor who treated the claimant, Dr. V). Finally, some treatises put into evidence show that in a study of 120 patients with Meniere's disease, only three percent of the cases were associated with head trauma.

Concerning the medical report attached to the carrier's appeal, it is generated by Dr. V, from whom many other records are in evidence. The medical report existed a month before the CCH. Given that evidence in the record concerning prior injuries and conditions of the claimant did not compel a finding in the carrier's favor, we are not persuaded that this report would be likely to result in a different decision if it had been considered. Therefore, we have not considered it and will not remand the decision.

We agree with the carrier that a finder of fact should be concerned when a major medical witness, on a matter involving the causation and etiology of disease, does not accurately understand the patient's previous medical history, especially when trauma is involved but not disclosed. However, we also note that there was no diagnosis of the Meniere's disease prior to sometime in 1998. The claimant was having problems with his gallbladder in early 1997, which in his mind accounted for his nausea and vomiting. The removal of his gallbladder alleviated those symptoms. The November 3, 1997, treatment note of Dr. W notes dizziness in connection with neck pain. Although the carrier argues that the theory of "aggravation" was advanced for the first time at the CCH (and not at the benefit review conference), it does not appear from the hearing officer's decision that he agreed with the claimant's aggravation theory, but instead found that the condition was caused by the claimant's truck-to-truck collision that also resulted in other more serious bodily injuries. The argument that Dr. R did not know the claimant's history of traumas over the previous years was litigated and presented to the hearing officer. It was his duty, as sole judge of the weight and credibility of the evidence, to assess whether such omission was material or relatively unimportant. 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).

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. This is equally true of medical evidence. Texas

Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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 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.). Plainly, there is a fair amount of evidence against the hearing officer's decision; however, evidence in support of the decision includes the severity of the collision, the fact that some of the claimant's previous symptoms could be associated with another disease process he was undergoing at the time, and the fact that trauma, although an uncommon cause of Meniere's disease, can nevertheless bring it about. Based upon our standard of review, and finding some support for the hearing officer's decision, we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Philip F. O'Neill
Appeals Judge