

APPEAL NO. 002667

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 October 17, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and had disability from such injury, and whether the respondent (carrier) was relieved of liability due to the failure of the claimant to give notice of the injury to his employer within 30 days. The hearing officer found that the claimant's testimony was not persuasive and found against him on all issues.

The claimant has appealed, arguing that the weight of the evidence favors his case. The carrier has responded that weight of the evidence favors the decision.

DECISION

The hearing officer's decision is affirmed.

The claimant contended he was hurt when a heavy door fell on him and he slipped underneath it. He further contended that he reported the injury to his supervisor that day, but then also agreed he did not report it for another six weeks, around the time of an expected layoff, when he first sought medical treatment for his injury. His account was disputed in some respects by the supervisor as well as a coworker who was involved in the same incident.

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). 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). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole.

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:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge