APPEAL NO. 002668

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 20, 2000. The issues at the CCH were whether the appellant's (claimant) injury of _____, constituted a producing cause of her lumbar disc degeneration, lumbar sacral neuritis, and chronic back pain, and whether she had disability after August 22, 2000.

The hearing officer held that the injury did not result in the problems listed in the first issue, and that the claimant did not have disability due to a compensable injury after August 22, 2000.

The claimant appeals, emphasizing in her discussion the evidence that she feels supports a connection between her _____, injury and her current chronic back pain. The claimant attaches some new medical information, including reports generated since the CCH. The respondent (carrier) responds that the claimant cannot at this point introduce new evidence. Further, the carrier argues that the hearing officer's decision is supported by the record.

DECISION

We affirm the hearing officer's decision.

The hearing officer has done a fair job of summarizing pertinent evidence. The claimant injured her back on _____, while lifting a tray at work. She was initially treated primarily for lumbar strain. The claimant saw a number of doctors for pain. However, she returned to work after she felt she had recovered sufficiently. The evidence showed a long gap of nearly a year between returning to work and seeking medical attention again for back pain (which was paid for through the claimant's regular medical insurance). There is conflicting medical evidence that the claimant's chronic pain either emanates from an ongoing degenerative disc disease or is connected to her _____, injury. The claimant was given an unrestricted release to work by her doctor, Dr. T, effective August 22, 2000.

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.). 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). In this case, the hearing officer could conclude that the effects of the _____ injury had resolved, and the claimant's pains that arose over a year after the accident were a manifestation of her ongoing degenerative disc disease. The hearing officer could further conclude the reason that the claimant said she could not work after August 20, 2000, was not the result of a compensable injury. It also appears that the hearing officer believed that the claimant could continue to work after that date notwithstanding her chronic back pain. Clearly, the hearing officer did not doubt that the claimant had back problems; the problem was in connecting all such problems to the single incident of _____. The fact that a person has physical problems after a work-related injury does not itself establish the link, particularly when there has been a return to work and a lack of medical treatment for a year.

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 on the appealed issues, and we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert W. Potts
Appeals Judge