APPEAL NO. 002686

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 23, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability from that injury from that date until the date of the CCH.

The appellant (carrier) appeals, arguing that the great weight of the credible evidence shows that claimant had a pre-existing back injury and was not injured on the job, and therefore he does not have disability. The carrier argues that because this was a repetitive trauma injury and the claimant did not prove a higher incident of exposure to risk, his back problems are not compensable. The claimant responds by reciting facts that support the decision.

DECISION

We affirm.

The claimant testified as to the activities involved in the installation of several ceiling fans that he was performing on _____, for his employer. He began to have back pain on the afternoon of that day. The next day, the claimant could hardly move from bed; he went in to work but was not able to perform his duties. He was not sure why the employer recorded the mechanism of injury as falling off a ladder.

The claimant said that since then, he was unable to work, and he was unsure in his testimony about whether he had been released to light duty. The claimant called his home office in may to inquire about the availability of light duty, but the employer never got back to him. The claimant said he had been involved in a motor vehicle accident while riding as a passenger in 1997, but that aside from a week's worth of stiffness, he sustained no injury and had no medical treatment.

The clinic that initially treated him indicated that he could return to work on May 1, 2000. However, Dr. J, his treating doctor, maintained him in an "off work" status. He was diagnosed with a herniated lumbar disc and radiculopathy by Dr. J. His May 18, 2000, MRI characterized the herniation as broad and shallow. The claimant said he had received no medical treatment during the prior 2-1/2 months because the carrier had denied the claim.

We observe that we do not agree that the claim is one of repetitive trauma. Rather, the claimant described the series of activities in which he was involved on the specific day, and said that his back began to bother him in the afternoon. A series of activities within a specific period of time may meet the definition of "date and time certain" for a specific injury, with no requirement to identify the particular ceiling fan which caused the injury. *See* Texas Workers' Compensation Commission Appeal No. 951862, decided December 20, 1995. *And see* Texas Workers' Compensation Commission Appeal No. 992851 decided January 27, 2000. A claimant's testimony alone may establish that an injury has occurred,

and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.- Houston [1st Dist.] 1987, no writ). 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). While there were conflicts, the hearing officer's resolution of those conflicts is not against the great weight and preponderance of the evidence. We affirm his decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge