APPEAL NO. 002702

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 found that the respondent's (claimant) injury extended to his back and that he had disability from March 7, 2000, until the date of the CCH. The appellant (carrier) appeals, arguing that the claimant lost time only due to a termination for cause, and that the finding that he hurt his back was against the great weight and preponderance of the evidence. There is no response from the claimant.

DECISION

Affirmed.

The claimant worked as a cashier and a delivery person for (employer). He was injured in a motor vehicle collision on the way to a catering operation on _____. He and the other workers completed the job that evening after a police report of the accident was taken. It was agreed by the carrier that he hurt his elbow and shoulder. The claimant said he complained of these regions, but beginning that evening, his back also began to hurt, and he sought medical treatment starting December 14, 1999. He said that his doctor, Dr. H, a chiropractor, told him he should be off work beginning February 7, but he worked until terminated for cause on March 7, 2000, because he feared losing his job if he made a workers' compensation claim. Dr. H's records show that he diagnosed the claimant's condition as strains and sprains throughout his thoracic and lumbar spine. The claimant said he had not worked since his termination because he was in pain and was unable to work. The claimant was treated primarily with electrical stimulation and therapy.

The claimant's supervisor agreed that the claimant reported a hurt back near the end of February and began wearing a back brace. He said that prior to this, the claimant never complained of any effect on his ability to do his job. The owner of the employer disputed that the claimant would have been punished for filing a workers' compensation claim and told about how he had supported another worker in a back injury claim although it had been denied by the carrier.

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). It was up to the hearing officer to weigh whether the claimant's asserted injury was the cause of his inability to work as opposed to his termination. We would further note that although the carrier has argued that expert medical evidence is required to prove that a back injury resulted from a motor vehicle accident, we do not agree; the claimant's testimony alone, considered with the mechanism of the accident, may support a finding in the claimant's favor. 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 do not agree that this is the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge