APPEAL NO. 002754

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 November 7, 2000. The hearing officer determined that the appellant (claimant) did not sustain a work-related injury or have disability.

The claimant appeals and attaches a medical record not submitted at the CCH. The respondent (carrier) responds by reciting facts in favor of the decision.

DECISION

We affirm.

The hearing officer has summarized the pertinent testimonial evidence. The claimant, a part-time cashier, contended that she was injured while lifting a heavy item, although she also said that her problem could have been "building up" through the course of performing this type of work. It was undisputed that the claimant did not inform her employer of her alleged neck and back injury two days earlier until after she had resigned her position on September 6, 2000, with two weeks notice, because of stress; although the claimant said she wrote the letter when she was in serious pain, the letter did not mention that she had injured herself at work. When the claimant was told that she could make that day her last rather than work another two weeks under stress, it was at that point that she mentioned a back injury at that point and was sent to the employer's doctor. Part of the stress of the claimant's job involved times she was "written up" for problems in her cashiering job.

While the first doctor she saw recorded complaints of pain under examination, some objective testing, such as straight leg raising, was negative. He diagnosed myalgia, myositis, and spasms. A doctor of claimant's choice, Dr. S, found cervical and lumbar muscle spasms on September 18, 2000, and prescribed physical therapy, which was not provided due to denial of the claim. The claimant had a previous workers' compensation back injury in 1999 from a fall, which kept her off work for two months, but contended that a different area of her back was affected at that time.

We cannot consider evidence submitted with the appeal that was not brought out at the CCH. The MRI report attached to the appeal was in existence several months before the injury and could have been brought to the CCH.

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.).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Section Manager