APPEAL NO. 002805

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 13, 2000. The hearing officer held that the appellant (claimant) had given timely notice through his attorney of his contended injury, but that he did not prove that his hiatal hernia, chronic gastritis, and reflux were caused by pulling on a pipe on _____. She further held that the claimant did not have disability because he did not sustain a compensable injury.

The claimant has appealed the rulings adverse to him, and the respondent (carrier) responds by asking that the decision be upheld.

DECISION

We affirm the hearing officer's decision.

The claimant contended that he sustained various gastric problems when he was hit in the abdominal area by a pipe he was pulling on _____. He maintained that he had no similar problems prior to that date. There was conflicting evidence from his supervisor who said that the claimant had previously complained about acid reflux. The claimant was found, through x-rays taken in Mexico on June 10th, to have a medium-sized hiatal hernia. A report from his treating chiropractor does not explain how the asserted injury could have resulted in his gastric problems.

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). 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).

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 was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge