APPEAL NO. 002907

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 20, 2000. The hearing officer held that:

> The claimant sustained a cervical injury during an accident occurring on the job on _____, but he did not have disability from that injury.

The carrier has appealed the finding of cervical injury and the claimant appealed the finding of no disability.

DECISION

We affirm the hearing officer's decision on both appealed points.

Appeal of Injury Issue. The hearing officer did not err in finding that the claimant's compensable injury included a cervical injury. The facts recited by the hearing officer are incorporated therein. He was evidently persuaded from the mechanism of injury and the objective evidence of injury that the claimant injured his neck when a derrick crashed down on the cab of his truck.

Appeal of no disability finding. Likewise, the hearing officer did not err in finding that the injury did not cause the claimant an inability to obtain and retain employment. His testimony, that he would have continued to work had he not been laid off on June 13, 2000, as well as the fact that he continued to work after his injury with no evident inability to perform his job, support the hearing officer's conclusion.

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).

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 decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge