APPEAL NO. 002913

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 28, 2000. He held that the appellant's (claimant) previous compensable injury of _____, was not a producing cause of his back problems that began on _____.

The claimant appealed this as being against the medical evidence, and the respondent (carrier) responded by seeking affirmance.

DECISION

We affirm the hearing officer's decision.

The claimant injured his back on _____, carrying a window unit air conditioner. He had some limited treatment for this injury (although he asserted that his doctor had never been paid). The claimant said that he never had problems with his back before this, although a report from his initial treatment in 1998 stated that he had increasing back pain for three or four months. The claimant said that before this injury he went bowling as often as three or four times a week, but had to cut down because of arm pain, not back pain.

The claimant had brief medical treatment for a few months in 1998 for a lumbar strain and then no further treatment until after _____, when he was knocked to the floor at his home by pain that occurred as he bent over to lift a small item. X-rays taken after this incident were found by doctors to indicate the same preexisting spurring in his lumbar spine as found in 1998 with no apparent worsening. The claimant agreed that he did not have pain down his leg after either incident. He said that he had continuing back pain, however, between the incidents. The claimant's treating doctor asserted that there was a direct relationship of the latter incident to the former, and the carrier's doctors stated that there was no relationship.

The hearing officer did not err by finding that there was no connection of the _____, problems to the earlier back strain. The fact that a claimant may have problems with a region of the body that was earlier injured does not, standing alone, mean that the latter condition is necessarily part of the earlier compensable injury.

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 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.).

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 cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge