APPEAL NO. 010111

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. The hearing officer, noting that the appellant (claimant) was not a credible witness, held that the claimant did not prove that he sustained a compensable injury or that he had disability from this as a result. The hearing officer noted that the inability of the claimant to obtain and retain employment for the period from November 12, 1999, until February 14, 2000, was due to unknown reasons.

The claimant appeals, arguing that he proved his case. He says that he has always had trouble with times and dates and this would account for him being a poor historian. The respondent (carrier) responds that the hearing officer can choose to believe other evidence over the claimant's testimony and the decision should not be set aside by the Appeals Panel.

DECISION

We affirm the hearing officer's decision.

The claimant was a forklift driver and said that on _____, he jumped from the forklift to steady an uneven load that was not leveled, and injured his back while he tried to slide the load. He estimated that the load was in excess of a thousand pounds. There were no witnesses, although he said he told Mr. P that his back was hurting.

The claimant sought treatment from Dr. F beginning on November 14, 1999 (later shown to be the 18th). The claimant said that he was taken off work and released sometime in March 2000, but he also said he was off work for eight months. However, it was brought out that the claimant was found to be at maximum medical improvement on February 14, 2000, the day he was also involved in a motor vehicle accident. He denied he hurt his low back in that accident (although it was documented as such by Dr. F) and claimed that he hurt only his neck. The claimant said that other than March 2000, he really could not give a date when he had returned to work for the employer.

Mr. SP, a supervisor of the claimant, said that he first found out about the alleged injury a week later from Mr. P, when the claimant did not show up for work. Mr. SP said that prior to this time, the claimant had been counseled about absenteeism on Saturdays, a day he was supposed to work. Another worker for the employer, Mr. S, said that the claimant completed an injury form on _____, and had not previously mentioned or reported a back injury. The claimant's medical records show that he had a lumbar strain and the history of the accident recorded by his doctors was what he testified to.

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. 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 therefore affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge