APPEAL NO. 010114

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 December 20, 2000. The issues at the CCH were whether the appellant (claimant) sustained injury on _____, to her neck, upper back, and lower back in addition to her left shoulder injury, and whether she had disability from November 17, 1999, to September 2000, from her _____, injury. The hearing officer determined that the claimant's compensable injury was limited to tendinitis in her left shoulder, which did not result in disability for the time period sought.

The claimant has appealed, arguing that the decision is against the great weight and preponderance of the evidence which is recited in the appeal. The claimant objects to the weight that the hearing officer assigned to certain aspects of the treating doctor's testimony. The respondent (carrier) responds by noting that evaluation of credibility is the hearing officer's responsibility, and that the claimant need not have been a doctor to offer credible testimony on identifying the body regions that she contended were injured.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in her determination of the extent of the injury in question or the fact that disability did not result from the shoulder injury for the time periods in issue. The hearing officer made clear that she did not credit the testimony of the claimant or her doctor. She also noted that evidence offered in favor of disability was sparse. Essentially, it consisted of "off work" statements within the reports of the treating doctor. We cannot disagree with this evaluation of the evidence. Prior to seeking assistance from Dr. O, the claimant's filed documents and interview with the adjuster limited her injury to her shoulder, and, in fact, identified the date of that injury as a prior 1998 injury. While the evidence supports that a limited incident on _____, aggravated the shoulder condition, testimony was frankly inconsistent regarding the occurrence of any cervical or back injuries and the inception thereof. An MRI taken within the month after the incident showed a small, non-impinging herniation in the cervical spine. However, the hearing officer was not required to assume that this resulted from the described incident.

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). 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:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge