APPEAL NO. 010192

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 January 10, 2001. The hearing officer determined that the appellant (claimant) injured his back on _____, in the course and scope of his employment and that he had disability beginning May 30, 2000, through the date of the CCH. The respondent (carrier) has appealed the decision that there was a compensable injury as against the great weight and preponderance of the evidence. There is no response from the claimant .

DECISION

We affirm the hearing officer's decision.

We do not agree that the hearing officer erred in his factual resolution of the injury issue. The carrier's appeal boils down to whether the hearing officer should have believed some evidence over other evidence. There was conflicting evidence presented in this case as to whether the claimant injured his back the Friday before Memorial Day weekend, or over that weekend, or whether he understood right away that he had a back injury as opposed to a kidney infection. However, the coworker with whom the claimant was working at the time of his injury corroborated the testimony that the claimant was helping him lift boxes and hurt his back while doing so.

Although timely reporting of the injury was not in issue, because a portion of the carrier's appeal concerns the hearing officer's comments on his notice to his employer; we note that there was testimony from Ms. T, a person in a management position who worked for his actual employer, that the claimant reported his injury to her the week after it occurred. The claimant's employer was a supplier of labor to the company where he was stationed when he was injured. What the supervisors at the company where he was injured understood about his condition was some of the conflicting evidence that the hearing office had to reconcile.

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 therefore affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge