APPEAL NO. 010432

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 February 8, 2001. The hearing officer held that the appellant's (claimant) compensable injury did not include a disc bulge and annular tear and that the claimant did not have disability after November 8, 1999, but she did for September 17 through November 8, 1999.

The claimant has appealed, arguing that the evidence proved that she sustained a new injury as well as an aggravation to any preexisting degenerative condition. The claimant asserts that the hearing officer erroneously assumed that the effects of the lumbar strain had resolved by December 10, 1999. The respondent (carrier) responds that it was never the claimant's position that she was off work after December 10 due to a lumbar strain, and recites facts supporting the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in her conclusions that the conditions asserted by the claimant over and above the stipulated lumbar strain were not related to the compensable injury. We should first emphasize that although the claimant was 60 years old and had arthritis, an employer takes the employee as he finds him or her. An incident may indeed cause injury where there is preexisting infirmity and where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963).

However, 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, as here, 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 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.). In this case, there is evidence to support the hearing officer's determination that the claimant's injury did not extend to an annular tear or bulging disc, but that these were degenerative conditions not affected by the claimant's accident. Likewise, she could conclude, and is

supported, that any inability to work beginning December 10, 1999, was due to the degenerative conditions. We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge