APPEAL NO. 011256
FILED JULY 9, 2001

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 May 2, 2001. The hearing officer found that the appellant (claimant) did not sustain a new injury on _____, nor was his back strain after that date related to an earlier injury of _____. The hearing officer further found that there was no disability. There are two carriers for two employers for whom the claimant worked on _____, and on _____.

The claimant has appealed the decision that he did not sustain a new injury, arguing evidence that he believes proves his case. He further argues that the new injury caused disability. The respondents (carriers) respond by asking that the decision be affirmed.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err by determining that the claimant was not injured or that he did not have disability after _____. The claimant had injured his back on _____, for which he was treated by Dr. N and Dr. M. Such treatment continued throughout 1999 and 2000. The claimant contended that he reinjured himself on _____, when he was working as a stocker for a discount store and someone tossed a box of products at him to load into a freezer compartment. He stated that his thoracic spine and lower back were injured. The claimant had worked for this second employer for less than a month.

The medical records in the file show that Dr. N diagnosed thoracic and lumbar strain on January 15, 2001. Dr. N wrote in April of that year that this had nothing to do with his previous 1998 injury and rather represented a soft tissue injury. A chiropractor who treated him, Dr. R, opined that this was a new injury connected to catching the box. The medical records show that Dr. M treated the claimant for low back pain almost two weeks prior to his asserted 2001 injury. A March 2001 MRI of the thoracic spine was normal. A CT scan of the lumbar spine showed a small bulge at L4-5.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). 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 facts set out in a medical record are not proof that a work-related injury in fact occurred. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no

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

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge