APPEAL NO. 011312
FILED JULY 24, 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 (CCH) was held on February 8 and March 30, 2001, and the record closed on April 9, 2001. The hearing officer held that the respondent/cross-appellant (claimant) sustained a compensable injury on _____, causing an inability to obtain and retain employment (i.e., disability) for the period from July 11 through 27, 2000. The hearing officer further found that because the employer made a bona fide offer of employment on July 12, 2000, the appellant/cross-respondent (carrier) could offset any temporary income benefits (TIBs) by the amount of the offered wages. The hearing officer finally held that there was no disability after July 27, 2000, and that any inability to work was not due to the claimant's injury.

The claimant has appealed, and argues facts that she believes support a greater period of disability than that found by the hearing officer. The claimant further asserts that any bona fide offer did not comply with the applicable rules of the Texas Workers' Compensation Commission (Commission), and, in any case, any credit should not exceed the six-week term of the offer. The carrier has also appealed the determination that the claimant sustained a compensable back injury, pointing out the medical documents proving that her back pain was attributable to a urinary tract infection. The carrier responds to the claimant's appeal by seeking affirmance on those appealed issues. The claimant responds to the carrier's appeal by arguing that error has not been preserved properly for review, and that findings in favor of a compensable injury are supported by the record.

DECISION

We affirm the hearing officer's decision on all appealed points.

The claimant, in her early 20s, worked for a temporary services company, and was stationed at a client company on _____, when she slipped on some stairs. She said she fell in a sitting position, with one leg curled under her, and hit her back on the step behind her. Her first treating doctor, Dr. R, testified at the CCH by telephone. He first treated the claimant two days after the accident, and diagnosed thoracic and lumbar strain and thoracic contusion. He gave her restrictions, and the employer made a written proposal of light-duty work meeting these restrictions, for another client company. The duration of this offered job was to be six weeks. The claimant actually worked some period of time for this other client but said she was unable to keep it up due to pain.

The hearing officer did not err in finding that the claimant had a back injury, but that she did not have disability from this injury beyond July 27, 2000. There was evidence that objective testing of her back was essentially normal. A videotape showed a person several months after the accident moving without apparent pain. There was considerable evidence offered of a bladder infection diagnosed shortly after the injury which worsened (according to comparison of objective testing done right after the injury and some months later), and

which, according to Dr. R, could cause some back pain. Dr. R agreed that the bladder infection would be a smaller factor than her back injury in producing back pain. Dr. R released the claimant back to work without restrictions effective July 27, 2000.

The claimant argues that the carrier was required to show that the bladder infection was the "sole cause" of disability after July 27, 2000. We do not necessarily agree. We would note that the hearing officer's finding in this regard does not specify that any inability to work was due to the bladder infection, but states instead that it was not due to her mid and low back injuries. This finding is consistent with an inference that the effects of the initial injury were of fairly short duration, and that is supported by the record here.

The hearing officer did not err in finding that a bona fide offer of employment had been made. There was a written offer as required by the rules of the Commission. While we would agree that any credit against TIBs because of this could not exceed the six weeks duration of the offered position, Section 408.103(e), the record supports the hearing officer's decision on this issue. We note that her fact finding specifically points out that the offered position was to last six weeks.

We do not agree that the carrier failed to preserve error on its appeal of the compensable injury and disability findings; it has argued consistent with the standard for reversing a fact decision that is used by the Appeals Panel. 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). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). 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). 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 is the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge