APPEAL NO. 011535
FILED AUGUST 14, 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 May 11, 2001. The hearing officer determined that the respondent's (claimant) injury of _____, extended to both a strain and damage to her spinal cord, which precipitated transverse myelitis. The hearing officer also determined that the claimant had disability from her injury for the period from _____, through the date of the CCH.

The appellant (self-insured) appeals, arguing that the opinion of a doctor, upon which the hearing officer based his decision, was mere speculation as to the cause of the transverse myelitis; and that the doctor's opinion on causation did not rise to the level of reasonable medical probability. There is also a general statement that the claimant "did not prove" that she had the inability to work due to her condition. The claimant responds that she agrees with the hearing officer's decision.

DECISION

Affirmed.

Extent of Injury

The hearing officer did not err in determining that the claimant's injury consisted of the strain as well as the condition of transverse myelitis. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The claimant suffered an undisputed back trauma lifting a heavy box; within the week, she began to experience symptoms, which were ultimately found to be related to transverse myelitis. The hearing officer's findings of fact dovetail with the opinion of Dr. W, who was the required medical examination doctor appointed to examine the claimant by the Texas Workers' Compensation Commission. Dr. W ordered repeat testing; as the hearing officer notes, Dr. W's conclusions and opinions are carefully outlined, not just in her final letter but in all correspondence in the record. It is an oversimplification to describe Dr. W's opinions as mere speculation or guess, or to state that Dr. W's first letters reflect a doubt of her ability to diagnose or opine about the claimant's condition. Rather, the hearing officer could believe that these letters reflect care not to "rush to judgment" or to speculate pending further testing and receipt of all medical records.

There was essentially no evidence presented to counter Dr. W's opinions, or those of the various doctors who treated the claimant and sought to get to the bottom of her increasing neurological symptoms. In fact, nearly all of the cross-examination consisted of soliciting the claimant's subjective understanding of information already in the medical records. As the

hearing officer pointed out, treatment of the claimant's condition was suspended for a number of months due to the self-insured's dispute. We find sufficient support in the record for the hearing officer's decision.

Disability

The hearing officer did not err in determining that the claimant did have disability. The claimant testified as to her increasingly visible neurological symptoms that manifested during her job interviews, and her belief that the lack of offers was related to this. A claimant's testimony alone is sufficient to establish that an injury has caused disability. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). 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 hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge