APPEAL NO. 011633
FILED SEPTEMBER 4, 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 17, 2001. She held that the respondent's (claimant) _____, injury included her low back and right leg in addition to her stipulated right ankle injury; that she had disability beginning May 14, 1999, and continuing to the date of the CCH; and that she had not made an election of remedies when she accepted group health benefits for some of her medical treatment.

The appellant (carrier) has appealed, arguing facts that it believes weigh against the hearing officer's decision. The claimant asks that the decision be affirmed.

DECISION

We affirm the hearing officer's decision.

INJURY AND DISABILITY

The hearing officer did not err in determining that there was a causal connection between the claimant's back injury (including a herniated lumbar disc) and her _____, fall. Although the defense of the claim seems largely inspired by the passage of time between the incident and the claimant seeking treatment from her own doctor, the hearing officer could consider the claimant's testimony that explained this as credible. The testimonial and medical evidence presented a classic case of conflicting evidence for the trier of fact to resolve. A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). There was no evidence of any intervening incident. We would caution that while a truncated chronology alone does not establish a causal connection between an accident and a later-diagnosed injury (Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994), neither does a delayed manifestation nor the failure to immediately mention an injury to a health care provider necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984). 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). When a compensable injury results in an inability to obtain and retain employment equivalent to the preinjury average weekly wage, a finding of disability is supported. *See* Section 401.011(16).

ELECTION OF REMEDIES

The hearing officer did not err by finding that there was no election of remedies made against coverage under workers' compensation when the claimant initially resorted to her group health insurance coverage. The Appeals Panel has written several times on whether mere use of a group health insurance policy qualifies as a knowing election of remedies, and has generally not been favorable to this argument. Texas Workers' Compensation Commission Appeal No. 990022, decided February 19, 1999; Texas Workers' Compensation Commission Appeal No. 990262, decided March 26, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 001471, decided August 7, 2000; and Texas Workers' Compensation Commission Appeal No. 002682, decided December 22, 2000. We affirm the hearing officer's decision in this case for reasons similar to those articulated in the cited cases.

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 affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge