APPEAL NO. 012256
FILED NOVEMBER 01 ,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 August 29, 2001. There were two issues reported from the benefit review conference. The first issue was whether the compensable injury of _____, included injuries to the neck and back (which were then specifically described in terms of a cervical and lumbar herniated disc and cervical radiculopathy). The hearing officer decided this first issue partially; he held that because the cervical injuries had been addressed through the second opinion spinal surgery process, he no longer had "jurisdiction" to enter a "declaratory judgment" as to the neck. However, regarding the lumbar area, he held that the appellant (claimant) had not injured his lumbar spine on _____, and such injuries did not naturally flow from his head and neck injuries. The hearing officer made no findings at all on the issue of whether the respondent (carrier) had newly discovered evidence on which to reopen the issue of compensability.

The claimant has appealed only the determination that he did not show injury to his lower back on the date in question, pointing to evidence that he believes makes this showing. The carrier responds that the requisite proof was not made. Neither party has appealed the failure of the hearing officer to make a determination as to the cervical region or the newly discovered evidence issue, and these have consequently become final.

DECISION

We affirm the determination made on the only appealed issue.

We have only been asked to address whether the great weight and preponderance of the evidence is against the hearing officer's determination that the injury of _____, did not include an injury to the lumbar spine. On the date of injury, the claimant jerked his neck back in response to being struck in the head by a desk that he was unloading from a truck. There was conflicting evidence offered by the parties. As illustration of the divergent extremes of this conflicting evidence, a required medical examination doctor stated that any lumbar conditions objectively diagnosed were entirely degenerative, while the designated doctor had based his impairment rating solely on the lumbar area. The treating doctor also supported the existence of various lumbar syndromes, but the claimant denied any low back pain when first treated within the week after the injury.

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 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). It was for the hearing officer, as

trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. 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.). 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 the hearing officer committed reversible error concerning his determination that the claimant did not injure his lumbar spine on _____, and affirm the decision and order.

The true corporate name of the carrier is **LIBERTY MUTUAL**. The name and address of its registered agent for service of process is

C.T. CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge