

APPEAL NO. 020147
FILED MARCH 4, 2002

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 January 2, 2002. He determined that the appellant/cross-respondent (claimant) had an extent of his injury to a left hernia injury and lumbar spine injury. He further held that the claimant had disability from March 10 through April 20, 2001, but at no other time before the CCH.

Both sides have appealed. The claimant asserts that the record, viewed as a totality, greatly weighs against the limited period of disability found by the hearing officer. The respondent/cross-appellant (carrier) appeals the extent-of-injury determination, arguing that the claimant sustained only a strained abdominal muscle and sets out evidence that it believes supports its argument. The carrier also argues that there was no period of disability. Both sides respond to the other party's appeal.

DECISION

We affirm the hearing officer's decision.

Because the carrier argues that disability does not exist for the period of time that the claimant was "working" light duty, it is worth emphasizing that disability by definition exists if, due to the compensable injury, the injured worker is unable to obtain and retain employment equivalent to his preinjury average weekly wage. Section 401.011(16). The evidence was undisputed that the claimant worked overtime hours prior to his injury, but was, according to the employer's light-duty policy, unable to work overtime while under restrictions.

Essentially, the parties quarrel with the manner in which the hearing officer gave weight and credibility to the evidence as to extent of injury and disability. 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. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We would caution that while 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). The record in this case presented conflicting evidence for the hearing officer to resolve. The hearing officer need not have accepted that the claimant was coincidentally videotaped on a “good” day and he could consider the claimant’s testimony about the employment he did for a brief period of time after being terminated by the employer. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer on the issues appealed 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 therefore affirm the decision and order.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge