APPEAL NO. 020528
FILED APRIL 16, 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 February 11, 2002. He held that the respondent (claimant) was injured on _____, and had disability from his injury from _____ through the date of the CCH. The appellant (self-insured) appeals, arguing the lack of support for these findings and noting that pain alone does not constitute an injury. The claimant responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The claimant was employed by the self-insured as a maintenance worker and driver. He stated that his neck was injured when the front end of a riding lawn mower he was driving dropped into a pothole and he was nearly thrown. His supervisor agreed that the claimant reported this the same day. There was conflicting evidence as to activities the claimant performed after his accident at work, as well as on facts related to his disability. The claimant resigned from work after his 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). 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). Although different inferences about causation could be drawn from the facts in this case, the hearing officer obviously accorded credibility to the claimant and the hearing officer's inferences are not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The effects of the resignation and Family Medical Leave Act status on disability were fact issues for the hearing officer to consider.

While the Appeals Panel has on rare occasion observed that pain (without more) may not constitute an injury, we observe that the experience of pain after an accident

occurs is certainly a strong indicator that an injury exists. Ascertainment of the nature and scope of the physical damage typically comes after medical treatment and evaluation. It has been held that strains, sprains, wrenches, and twists that arise out of employment, even where an employee is predisposed to such injury, are compensable. Hanover Insurance Company v. Johnson, 397 S.W.2d 904 (Tex. Civ. App.-Waco 1965, writ ref'd n.r.e.). We affirm the hearing officer's determination on occurrence of a compensable injury and disability therefrom.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge