APPEAL NO. 022598
FILED NOVEMBER 20, 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 was held on August 29, 2002. The hearing officer determined that the appellant (claimant) did not sustain a shoulder and neck injury on _____, or have disability therefrom. The claimant has appealed, and argues that an MRI that was excluded for failure to timely exchange would have proved her case. The respondent (carrier) responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The claimant contended that she hurt her neck and right shoulder while picking up a heavy binder at work and that this caused an inability to work. There was evidence that she had preexisting complaints about neck and shoulder pain. A doctor for the carrier testified that the claimant's MRIs, one taken before the alleged injury, the other afterwards, were for all intents and purposes essentially identical, and that neither indicated traumatic injury as opposed to degenerative conditions. The carrier's doctor also testified that he believed the mechanism to which the injury was attributed would not under any circumstances cause damage to a cervical disc.

The hearing officer excluded the second MRI report when it was tendered, with the claimant conceding that it was exchanged over a month past the exchange due date. However, numerous records, as well as the testifying doctor's testimony, refer to the matters reported in that MRI. While we do not agree that the hearing officer erred in enforcing the exchange requirements set forth in Section 410.161, we would further note that the second MRI was not the critical piece of information in the claimant's case due to the number of references and written comparison with her previous MRI that are included in the record.

Essentially, the claimant quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. 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). 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. 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). Without a determination that there was a compensable injury, the threshold requirement for finding disability did not exist.

We therefore affirm the decision and order.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Veronica Lopez
Appeals Judge

_____
Michael B. McShane
Appeals Panel
Manager/Judge