APPEAL NO. 950195

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 30, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue at the contested case hearing was whether the appellant, (LD), who is the claimant herein, sustained a compensable injury to his back on (date of injury), at the same time he had a compensable hernia injury.

The hearing officer determined that claimant had not proven that he sustained a back injury that occurred on or arose from his (date of injury), injury. His findings of fact note pre-existing back problems as well as pain encountered by claimant after his injury when he lifted an anchor on his boat while in a kneeling position.

The claimant has appealed the decision, arguing that it is against the great weight and preponderance of the evidence. The claimant further argues that the carrier failed to prove that the sole cause of his back injury was either a pre-existing condition or a later occurrence. The carrier responds by detailing the evidence that supports the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

The claimant, employed by a hospital operated by the self-insured carrier, sustained an umbilical hernia when he strenuously kicked a heavy operating table in an attempted repair with another person. He stated that he was lying on his back, with his shoulders and torso braced against a desk, during the kicking operation with the objective of pounding a piece into the table leg. This occurred on (date of injury).

Claimant said that the next day he had stomach pain which radiated throughout his front abdomen. On May 14th, he went to the emergency room and underwent unbilical hernia surgery on May 16th. His surgeon was (Dr. J). Claimant maintained he saw Dr. J only one other time when he went to have the sutures removed on or about May 19th. Claimant agreed that he did not mention any back pain to Dr. J. According to claimant, he began to experience back pain a few days after his surgery, and attributed it in his mind to lying around in bed following the operation.

Claimant agreed he completed an injury report for the employer on May 18th, while he was in the hospital, and further agreed he did not report a back injury on this report. Claimant stated that he sought treatment on June 22, 1994, for his back pain from (Dr. C), a chiropractor who had treated him for earlier back pain as far back as November 1993. Claimant stated that Dr. C's notes attributing his back pain to an incident lifting the anchor on his fishing boat constituted a misunderstanding of what he told Dr. C. According to claimant, he told Dr. C that lifting the anchor made him aware of his back injury that had

been caused on (date of injury). Claimant stated that he lifted the anchor, which weighed about 16 pounds, sometime in mid-June while he was in his fishing boat. He stated he was kneeling in the front of the boat as he pulled it up from the water.

Dr. C referred claimant to (Dr. M) in July 1994, and Dr. M determined that claimant had a herniated lumbar disc at L5-S1, with a bulging disc at the level above that. Dr. M opined that claimant's back pain was directly related to his abdominal surgery due to the relationship between the abdominal musculature and the back. Dr. M wrote on September 19, 1994, that the anchor incident was in no way related. His understanding as reflected in this letter and his earlier notes about the (date of injury) incident was that claimant was attempting to "move" or lift a heavy operating table.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Texas Employers Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ).

The hearing officer is the sole judge of the relevance, the 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. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Ass'n 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.). Dr. M's opinion is not so unequivocal compared to the other evidence that the hearing officer was bound to accept it.

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).

The decision and order of the hearing officer are affirmed.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge