APPEAL NO. 950375

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 29, 1995, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The issues stated at the CCH were whether the claimant, (claimant), sustained a compensable injury on (date of injury), while employed by (employer); whether he gave timely notice to his employer within 30 days, and, if not, if there was good cause; and whether he suffered any disability as a result of his compensable injury.

The hearing officer determined that claimant had sustained a work-related injury on (date of injury). The hearing officer further found that he failed to give timely notice to his employer within 30 days after the injury, and did not have good cause for his failure to do so. The hearing officer found that the claimant had the inability to obtain and retain employment equivalent to his pre-injury wage from June 1, 1994, until the date of the hearing. Because of the notice issue, the hearing officer ordered that the carrier was relieved of liability for the claim. Both parties have appealed different portions of the decision.

The claimant has appealed the decision on the notice provision, arguing that he did give notice to his supervisor within 30 days. The carrier responds that the decision should be upheld on this point. The carrier filed an appeal on the hearing officer's finding that claimant sustained a work-related injury on (date of injury), arguing that the great weight and preponderance of the evidence is against this. No response to this point was made.

DECISION

We affirm the hearing officer's decision and order.

The claimant testified that as he was doing an automobile alignment around 2:00 p.m. on (date of injury), and as he bent over to read a machine, he felt a "pinch" in his back. Claimant said he was not doing any lifting, and that he was wearing a back belt, at the time. He said he mentioned the "pinch" to a coworker, (Mr. A), who was not a supervisor. (Mr. A testified that claimant complained that he had back problems due to his back brace, but did not recall the alignment incident; he said claimant complained frequently about back pain.) Claimant also stated that he told the shop supervisor, (Mr. T), about that injury and asked him to write up a report but he did not. Claimant said that when he subsequently contacted Mr. T to support him, Mr. T told him he did not want to get involved.

Claimant also testified that when he first sought medical treatment in December 1993, he filed under regular health insurance because he did not know about workers' compensation. When cross-examined as to why he would ask Mr. T to write up a report if he did not know about workers' compensation, he said he felt a report should be made. He also stated that he asked that a report be written after he first hired an attorney, about nine months after the incident.

Claimant said he did not feel enough pain at the time to concern him. Claimant worked until June 1, 1994, shortly before he had back surgery. He said he had been unable to work since then because of the pain. Claimant stated he found out that he would have to bear 20% of his health care expense under regular health insurance shortly before his surgery. Claimant maintained he had told his doctor from the first that his injury was work related and did not know why it was not so recorded in his medical records. Claimant had an operation for a herniated lumbar disc causing radiculopathy, after conservative treatment did not work, on July 9, 1994.

(Mr. F), the store manager, said that claimant never reported a work-related injury to him, and that he found out that claimant said he was injured on the job when the doctor's office called the day before the surgery. Mr. F stated he talked to claimant that afternoon and directly asked him if he had a workers' compensation injury and was told no. He asked claimant if he was sure and claimant responded that he was. Mr. F agreed that he knew before claimant's surgery that claimant had back problems, but not that the condition was ostensibly work related. Mr. F denied that he received bonuses if no workers' compensation claims were filed. (Claimant testified that "it was going around" that there were such bonuses.)

Mr. T was no longer employed by the employer at the time of the hearing. In a transcript of an interview with Mr. T, he denied that claimant told him he had injured himself on the job.

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. 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). While there are contradictions regarding the occurrence of any injury, and another fact finder could reach the opposite conclusion, there is sufficient evidence to support the hearing officer's determination that claimant sustained a compensable injury.

Section 409.001(a)(1) requires that the injured employee give notice of a specific injury to a person in a supervisory or management capacity within 30 days. However, the notice given, while it need not be fully detailed, should at a minimum apprise the employer of the fact of an injury and the general area of the body affected. Texas Employers'

Insurance Association v. Mathes, 771 S.W.2d 225 (Tex.App.-El Paso 1989, no writ). Because claimant contended he gave timely notice, there was essentially no evidence developed on good cause. The hearing officer was entitled to believe the testimony of supervisors over claimant's contention that he reported his injury. She may have believed that claimant's assertion that he reported a work-related injury was contradictory to his statement that he did not know about workers' compensation.

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 (Tex. 1951).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge