On December 11, 1991, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The issues at the hearing were: (1) did appellant (claimant at the hearing) sustain an injury in the course and scope of his employment with his employer, (employer), on (date of injury); (2) did appellant report the injury to his employer within 30 days; (3) did appellant have good cause for not reporting the injury to his employer within 30 days; and (4) did the employer have actual knowledge of appellant's injury. The hearing officer found that "there was no objective evidence to link any claimed injuries of the (appellant) to the incident on (date of injury);" that appellant did not report his claimed injury to his employer within 30 days; and that appellant did not have good cause not to report his claimed injury to his employer. Although the hearing officer did not make a specific finding on the issue of employer's actual knowledge of the injury, he stated in the "Statement of Evidence" portion of his decision that "the employer had no knowledge of a claimed injury." The hearing officer concluded that appellant was not entitled to receive any benefits for his claimed injury of (date of injury), under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act).

Appellant requests review of the hearing officer's determination on the issues considered at the hearing and that we reverse his decision and render a new decision. Respondent contends that there is sufficient evidence to support the hearing officer's findings that appellant did not report his injury within 30 days, and that he did not have good cause for failing to do so. Respondent also urges that we disregard appellant's testimony on redirect examination for the reason that such testimony was elicited by leading questions and for the sole purpose of rehabilitating the witness.

DECISION

Finding the evidence of record sufficient to support the hearing officer's decision, we affirm his decision denying workers' compensation benefits to appellant.

The 1989 Act defines "compensable injury" as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this Act," and defines "injury" as "damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm." Article 8308-1.03(10) and (27). Pursuant to Article 8308-5.01(a), an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs. An employee's failure to notify the employer as required under Article 8308-5.01(a) relieves the employer and the employer's insurance carrier of liability under the 1989 Act unless: (1) the employer or person eligible to receive notification under Article 8308-5.01(c) (any employee of the employer who holds a supervisory or management position) or the insurance carrier has actual knowledge of the injury; (2) the Commission determines that good cause exists for failure to give notice in a timely manner; or (3) the employer or insurance carrier does not contest the claim. Article 8308-5.02. (Emphasis supplied).

The following matters were stipulated by the parties at the hearing:

1. That on (date of injury), appellant was in the course and scope of his employment, standing at the base of a ladder when (Mr. E), appellant's supervisor, fell from the ladder and was caught by appellant.

2. Appellant first verbally reported to his employer on July 26, 1991, that the

incident on (date of injury), caused his injury.

3.Appellant worked at employer until August 30, 1991, when he was dismissed.

Appellant, who is 27 years of age, testified that on (date of injury), his first day at work, he was standing at the foot of a ladder when his supervisor, (Mr. E), fell from the ladder, and he caught (Mr. E). He said (Mr. E) fell 8 to 10 feet, that he, appellant, did not fall down but was able to balance himself close to some shelves; and that when (Mr. E) asked him if he was okay, he told (Mr. E) "I think I feel okay." He further stated that when the incident happened he "felt something," thought he had a bruise, did not think it would be serious, and that he just "let it go." He said that he started getting a little bit of pain in his back, leg, and shoulder a couple of weeks later; that his pain slowly increased; that in July 1991 his pain had "already increased," and that "that's why I figured that it was the cause of the accident up there at (Mr. E's), that I was getting the pain." He said he reported the injury to his employer two months after the incident. Appellant also stated that he had not been involved in any other accidents that could have caused him to have the pain he experienced.

Appellant gave conflicting accounts concerning the question of whether he visited (Dr. C) on the day of the incident to be checked for injuries. At first he denied seeing (Dr. C) on that day. Then, after he was shown a letter from his attorney, he said he did see the doctor on that day. Later, he said he could not remember the date he went to see (Dr. C), but that it was after (date of injury) and the company refused to pay for the appointment. Still later, he said that he could not remember the name of the doctor the company refused to pay for. The letter from appellant's attorney to respondent dated August 6, 1991, which was introduced into evidence by respondent, states in part:

"Please be advised that my client has been treated by the following health care providers to date:

August 1, 1991:	**(date of injury)**:
Occupational Health Ctrs.	(Dr. C)
(address)	
(city), TX (zip code)	(city), TX (zip code)

Appellant acknowledged that he gave his attorney the information in the letter about his doctor visits. This letter was the only document offered by either party relating to appellant's purported appointment with or treatment by (Dr. C).

On cross-examination, appellant testified that he was a temporary employee; that he was unaware that Texas workers' compensation laws applied to him; for that reason he did not tell his employer he got hurt when (Mr. E) fell on him; that he realized he was covered by workers' compensation when respondent paid for medical treatment for a subsequent injury to his finger on July 22, 1991; that when he found out he was covered by workers' compensation he reported to his employer he hurt himself when (Mr. E) fell on him; and that the only reason he did not report to his employer that he had been injured on (date of injury) when (Mr. E) fell on him was because he didn't think he was covered by workers' compensation. He also testified that until July 26, 1991, he never told his supervisor that he was hurt from the incident of (date of injury).

On redirect examination, appellant testified that his employer told him that as a temporary employee he was "not qualified for any benefits whatsoever." But also testified that his employer didn't tell him he was covered or not covered by workers' compensation,

and that when (Mr. E) fell on him he did not know whether or not his employer had workers' compensation. The following exchange then occurred:

Appellant's attorney: Now, you have testified that that -- in response to my question that the reason you did not report it is -- your injury was because that it did not manifest itself immediately and that you did not feel it was serious; is that correct?

Appellant: That's correct.

Respondent objected to the question on the grounds that "The question is leading. This is direct examination. Further, he is trying to rehabilitate his own witness." The hearing officer responded that he was not aware that leading is objectionable and that rehabilitation is permitted as far as he knew. Appellant's attorney continued his questioning of appellant and elicited from him testimony to the effect that he did not report his accident when it happened because he did not feel his injuries were serious and because he did not know whether his employer had workers' compensation.

Appellant also testified that he saw (Dr. K) after the Benefit Review Conference held on November 14, 1991, and that (Dr. K) told him he had a herniated disc, needed treatments, and not to work. He also testified that "the doctors" told him that his disc problem was related to his incident with (Mr. E).

Appellant introduced into evidence the transcribed recorded statements of appellant and (Mr. E). Appellant's statement is generally consistent with his testimony at the hearing. In his statement taken August 6, 1991, (Mr. E) stated that appellant caught him when he fell off the ladder; that he was 10 feet off the ground when he fell; that appellant did not fall down, but did fall backwards into a shelf; that appellant didn't say anything to him about being hurt; and that about two weeks before his statement was taken (which would be toward the latter part of July 1991), appellant told him that he was hurt when he caught him.

Appellant also introduced into evidence medical records and reports. The earliest report is dated November 6, 1991, over five months from the date of the incident on (date of injury). In that report (Dr. O) stated that appellant "sustained an accident on (date of injury) at work," that appellant told him a worker fell off a ladder and fell on top of him; and that appellant suffered contusions to the chest, contusions and sprain to the left shoulder and left arm, contusion to the left hip, sprain to the left knee, and severe sprain to the lumbosacral spine. He also stated that appellant would be totally disabled for two months. In a report dated November 20, 1991, (Dr. K) reported that he evaluated appellant on November 20, 1991, for complaints of cervical and lumbar pain, and left shoulder, chest, left hip, left knee, and left ankle pain. (Dr. K) also reported that appellant told him that the onset of these complaints "became apparent on 5-22-91 (sic) after he suffered an injury while employed by (employer)," and that he "felt sore all over," but continued to work. (Dr. K's) assessment of appellant's condition was: "1. Left cervical radiculopathy. 2. Left lumbar radiculopathy. 3. Spasms of the cervical and lumbar area. 4. Probable protruded or herniated lumbar and cervical disc." On November 21, 1991, an MRI scan of appellant's cervical spine revealed a protruded disc at C5-6, bulge disc at C3-4, and evidence suggesting spasms to the cervical region. A CAT scan of appellant's lumbar spine on the same date revealed an annular bulge at L3-4, and an annular bulge on the left side at L4-5. On November 7, 1991, and again on December 5, 1991, (Dr. K) placed appellant on "non-working status" until reevaluation.

We first consider the issue of whether the evidence supports a finding that

appellant did not report his claimed injury of (date of injury), to his employer within 30 days. In DeAnda v. Home Insurance Company, 618 S.W.2d 529, 532 (Tex. 1980), the Supreme Court of Texas stated that the purpose of the notice statute "is to give the insurer an opportunity immediately to investigate the facts surrounding an injury." In the present case, the parties stipulated that appellant did not give verbal notice to his employer that the incident of (date of injury) caused his injury until July 26, 1991, and appellant testified at the hearing that he did not report his injury to his employer for two months. We find that the evidence is sufficient to support the hearing officer's finding of no notice to employer within 30 days of the alleged injury and that such finding is not against the great weight and preponderance of the evidence.

We next consider the issue of whether appellant had good cause for failing to give notice in a timely manner. Appellant asserts that the evidence shows he had a good faith belief that his injuries were not serious and this constitutes good cause for failing to give timely notice.

Good cause is an issue which may arise both as to notice of injury and filing a claim for compensation. In Hawkins v. Safety Casualty Co., 146 Tex. 381, 207 S.W.2d 370 (1948), the Supreme Court of Texas stated:

> The term "good cause" for not filing a claim for compensation is not defined in the statute, but it has been uniformly held by the courts of this state that the test for its existence is that of ordinary prudence, that is, whether the claimant prosecuted his claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances. Consequently, whether he has used the degree of diligence required is ordinarily a question of fact to be determined by the jury or the trier of facts. It may be determined against the claimant as a matter of law only when the evidence, construed most favorably for the claimant, admits no other reasonable conclusion.

In Texas Casualty Insurance Company v. Crawford, 340 S.W.2d 110 (Tex. Civ. App.-Amarillo 1960, no writ), the court stated, "We believe the law is well settled that a bona fide belief of a claimant that injuries are not serious is sufficient to constitute good cause." In Crawford, the court upheld a jury finding that good cause existed for more than a year delay in giving notice and filing a claim. The claimant in that case suffered a hernia but worked for more than a year with an ache in her leg which she did not associate with the injury until advised by her doctor. In Aetna Casualty & Surety Company v. Brown, 463 S.W.2d 473 (Tex. Civ. App.-Fort Worth 1971, writ ref'd n.r.e.), the court held that the testimony indicating that claimant believed that her back injury was trivial and would not disable her was adequate evidence to support the finding of the jury that the claimant had good cause for failure to give timely notice of her injury to the employer. The court stated that the claimant had the burden on the issue of good cause for failure to give timely notice, and that the jury in considering the issue would find support in the evidence in answering either way. *See also* Texas Employers' Insurance Association v. Fricker, 16 S.W.2d 390 (Tex. Civ. App.-Amarillo 1929, writ ref'd); and *compare* Continental Casualty Company v. Cook, 515 S.W.2d 261 (Tex. 1974), where the Supreme Court of Texas held that there was insufficient evidence to support a finding of good cause for failure to file the claim based on triviality of the injury.

In the case under consideration, the evidence was conflicting on the issue of good

cause for failure to give timely notice of injury. On the one hand, appellant testified that he thought he had suffered a bruise, that he did not think it was serious, and that his pain slowly increased after the accident. On the other hand, there is evidence that appellant either saw or attempted to see a doctor on the day of the accident, and that he told another doctor that the onset of his complaints about pain became apparent on the day of the accident and that he felt sore all over. There is also evidence that the only reason he did not report his alleged injury was that he did not know he was covered by workers' compensation. Under the 1989 Act, the hearing officer is the trier of fact in a contested case hearing, and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Article 8308-6.34(e) and (g). As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). He or she is privileged to believe all or part or none of the testimony of any one witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). Considering that the issue of good cause is ordinarily a question of fact, that appellant had the burden to prove good cause, and that the evidence on the issue was conflicting, we find that the hearing officer's finding that appellant did not have good cause not to report his claimed injury to his employer is supported by sufficient evidence, and is not against the great weight and preponderance of the evidence. Moreover, we note that the Supreme Court of Texas has stated that a belief that compensation is not payable for the particular injury, or while the claimant is continuing to work, does not constitute good cause for delay in filing. Allstate Insurance Company v. King, 444 S.W.2d 602 (Tex. 1969).

We next consider the issue of the employer's actual knowledge of the alleged injury. The hearing officer did not make a specific finding of fact or conclusion of law on this issue. However, he did state in the "Statement of Evidence" that:

> "However, since the Claimant told his supervisor, (Mr. E), that he was not hurt after the incident, the Employer had no knowledge of a claimed injury. This precludes the argument of the Claimant that the Employer had actual knowledge of the injury."

Based on the above statements and his decision to deny benefits, we conclude that the hearing officer made an implied finding that the employer did not have actual knowledge of the alleged injury. Burnett v. Motyka, 610 S.W.2d 735 (Tex. 1980); Charter Oak Fire Insurance Company v. Hollis, (Tex. Civ. App.-Houston [14th Dist.] 1974, writ ref'd n.r.e.).

In DeAnda, *supra*, the Supreme Court of Texas held that the need for notice can be dispensed with when the employer or insurer has actual knowledge of the injury. The court approved that line of cases holding that actual knowledge acquired by a foreman, or other supervisory personnel, or agent designated by the employer to receive such information, will suffice. In DeAnda, the court was of the opinion that there was an abundance of evidence from which the jury could have concluded that the employer had actual knowledge of the employee's occupational disease where the employer made a doctor's appointment for the employee which resulted in the employee's 17-day leave of absence, the employer's agent in charge of job-related injuries received the doctor's letters prescribing bed rest for the employee, and the agent stated she had actual knowledge of two prior work-related incidents involving the employee's back.

In Miller v. Texas Employer's Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.), the employer observed a 47-year old employee fall five feet from the bed of a truck and land on his back on asphalt. The employee then began to

slow down in his work within the 30-day notice period. The court stated that the facts in the case did not establish, as a matter of law, either that the employer had notice or that the employer did not have notice of a compensable injury. Thus, a question of fact was raised for the jury's determination upon which the claimant had the burden of proof. The court concluded that there was some evidence that the employer had actual knowledge of the injury and, therefore, reversed and remanded the trial court's instructed verdict for the carrier. In Fricker, *supra*, the court held that notice to the employer was not required where the evidence showed that the employer knew of the employee's accident and was the cause of the employee being treated by the carrier's physician. A case where actual knowledge was not shown is Fairchild v. Insurance Company of North America, 610 S.W.2d 217 (Tex. Civ. App.-Houston [1st Dist.] 1980, no writ). In that case, a stack of paper fell over on the claimant knocking him to the floor. The claimant's supervisor, a co-worker, and the president of the company were nearby, heard the paper hit the floor, went to that area, and asked the claimant whether he was hurt, to which he answered that he thought he was fine. The claimant worked at the company for about six more weeks during which time he never notified or mentioned to anyone connected with the company that he was hurt as a result of the accident. The claimant urged that since his supervisor and the president of the company were aware of the accident it relieved him of the obligation to notify his employer that he sustained an injury. The court said that this is true in cases where the injury is apparent or there was evidence which would show that the employer had actual knowledge of the injury citing Miller, *supra*. But, the court said that the record was void of any evidence which would show that the employer had actual knowledge of claimant's injury. Claimant exhibited no signs of injury, he sought no medical attention for any ailment, he missed no time from work, nor did he even mention that he suffered in any way from the accident. Further, the accident was minor, rather than one in which it could reasonably be expected that the claimant would receive any injury. The court held the evidence supported the jury finding that employer had no notice of injury within 30 days.

In our opinion, the facts in the case under consideration more closely parallel the facts in Fairchild, *supra*, than those in DeAnda, Miller, or Fricker, *supra*. Although appellant's supervisor had actual knowledge of the incident, there was no evidence that he had actual knowledge of the injury. Immediately after the incident, appellant told his supervisor he was okay, he continued to work after the accident, he made no mention of the alleged injury for two months, he worked for employer for three months after the incident, and there is no indication that he exhibited any physical signs of injury while at work. We find that there is sufficient evidence to support the implied finding that the employer did not have actual knowledge of appellant's alleged injury, and that such finding is not against the great weight and preponderance of the evidence.

The fourth issue we consider is the hearing officer's finding that "there was no objective evidence to link any claimed injuries of the claimant to the incident on (date of injury)." We take this to be a determination that appellant failed to prove by a preponderance of the evidence that his work-related accident of (date of injury), was a cause of his injuries, an issue on which appellant had the burden of proof. *See* Rose v. Odiorne, 795 S.W.2d 20 (Tex. App.-Austin 1990, writ denied). There must be proven a causal connection between the accident and the ultimate death or disability, and this connection must appear from facts proven from which such connection may be reasonably inferred. Lindley v. Transamerica Insurance Company, 437 S.W.2d 371 (Tex. Civ. App.-Fort Worth 1969, no writ).

In the present case, appellant testified that his injuries were caused by the accident on (date of injury), and it appears that (Dr. O) related the injuries to the accident. A claimant's testimony, if believed, can support a finding of injury in the course and scope of

employment. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ). However, the trier of fact is not bound to accept the testimony of the claimant at face value. Garza, *supra*. The trier of fact also judges the weight to be given expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In assessing the weight to be given to appellant's testimony, the hearing officer could consider the inconsistencies in appellant's testimony concerning whether he saw or attempted to see a doctor on the day of the accident; that he told his supervisor he was okay after the accident; and that he worked for two months after the accident apparently without complaining of pain or missing work on account of the accident. Taking these matters and other evidence of record into consideration, we find that claimant's testimony was not so clear, direct, and positive, and lacking in circumstances tending to discredit it as to render it binding upon the trier of fact. *See* Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

Concerning the doctor's reports, it has been held that a doctor's examination which discloses an injury that could have been caused in the manner claimed does not prove, in and of itself, that the injury was sustained in the manner claimed. Hartford Accident and Indemnity Company v. Hale, 400 S.W.2d 310 (Tex. 1966). Taking into account all of the evidence, both in support of and contrary to, a finding that appellant's injuries were not caused by his accident of (date of injury), we cannot conclude that such finding is so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. However, even were we to determine otherwise on the issue of causation, it would not alter our decision due to our holding on the notice issues.

Concerning respondent's contention that the hearing officer erred in allowing leading questions on redirect examination, in view of our holdings on appellant's contentions, we find that error, if any, on the part of the hearing officer in his ruling on that matter would be harmless. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Conformance with the legal rules of evidence is not necessary at contested case hearings. Article 8308-6.34(e).

The hearing officer's decision is affirmed.

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Robert W. Potts
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Philip F. O'Neill
Appeals Judge