This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On January 16, 1992, (hearing officer) presided at this hearing in (city), Texas. He found claimant, respondent herein, was injured in the course and scope of employment on (date of injury), and timely notified his supervisor. Appellant asserts that the evidence is insufficient to find a compensable injury and insufficient to find timely notice.

DECISION

Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

Respondent had worked over a year for (employer) when he stated that he hurt his back on (date of injury). At that time he was working as a mechanic on the night shift with, (BO), his lead man, who had supervisory power when the shop manager was not on the job. Respondent and BO were putting an engine head on an engine block with BO working the hoist and respondent under the hood attempting to align the head. Respondent said he was jerking the head around and felt a pull in his back. He said he told BO he hurt his back about 15 to 20 minutes later and they took a long break. Respondent decided he could work and finished the shift. During the next few days the pain got worse and on Monday, (date), he met with employees in supervisory positions and began four days of vacation to rest his back. He added that he had told his lead man not to tell his supervisors of the injury because he feared losing his job for getting hurt at work. Along that line, he said he told supervisory employees above BO that he didn't know whether he hurt himself at home or at work when he asked for vacation time to rest his back. He said that at a meeting with these supervisors he was told about a disability insurance plan but not about workers' compensation being a possible remedy. He went to (Dr. M), on May 2 but Dr. M for some reason recorded "has no known injury at this time," referred to a 1989 back problem, and further stated "his back just slowly has become much, much worse with pain down his right leg." While no records of (Dr. L), D.C., are in evidence, respondent says he saw him for an adjustment before he saw Dr. M, but did not tell him of the (date of injury) accident because "he didn't ask." Presumably, (Dr. S), to whom respondent was referred by Dr. M, did ask because his record of May 9, 1991, states "He states that he was putting a head on a 671 engine and also had an aggravation of this by picking up a lawn mower about two weeks ago." He found three levels of disc degeneration.

Appellant objects to Findings of Fact 3, 5, and 6, plus Conclusion of Law 2. They read as follows:

Finding No. 3:

The Claimant injured his back on (date of injury), while installing the head on a diesel engine.

Finding No. 5:

The Claimant reported his injury to (Mr. O) on (date of injury).

Finding No. 6:

A preponderance of the medical evidence indicates that the Claimant injured

his back on (date of injury), in the manner he described (H.O. Ex. 7).

Conclusion No. 2:

The Claimant was injured on (date of injury), and reported his injury within thirty (30) days, as required by Tex. Rev. Civ. Stat. Ann. art. 8308-5.01 (Vernon Supp. 1991).

Appearing for appellant, BO stated that he and respondent did work together on (date of injury), and were putting a head on an engine at that time. He acknowledged that he was a lead man, but said respondent only complained of his legs going to sleep which is not unusual in his cramped position under the hood. The weight of the block was on the hoist. BO said respondent only told him that he didn't know whether he hurt his back at work or at home. According to BO, he could "not remember" respondent asking him not to tell his supervisors that he had hurt his back at work. (We note that at this time the hearing officer had to prompt BO to speak up for the audio record - BO had become barely audible.) This witness also denied that he had advised respondent to file a workers' compensation claim.

BO's supervisors, (Mr. E) and (Mr. H), both stated that respondent had reported that his back could have been hurt at home or on the job. Mr. E also confirmed that BO had supervisory power when the shop manager was not available. Mr. H had worked with respondent previously for another employer and had known him about five years. The first he heard of any injury to respondent was (date). He added that respondent had borrowed his truck, which has a hoist, to use because his own had problems and that the hoist in his truck had been used and was broken.

The hearing officer is the judge of the weight and credibility of evidence. Article 8308-6.34(e) of the 1989 Act. According to respondent himself, he had lied to two supervisors in saying he did not know how the injury occurred. The hearing officer could have questioned respondent's credibility and could have found no injury occurred on the job, particularly with the medical record of Dr. M dated May 2, 1991, which indicated an old injury had slowly gotten worse. Montes v. TEIA, 779 S.W.2d 485 (Tex. App.-El Paso 1989, writ dism'd). The hearing officer could also determine that injury did occur from the medical record of Dr. S. He could find that it happened on the job by resolving the conflict between respondent's testimony and that of BO in respondent's favor. The hearing officer may resolve conflicts in testimony and believe part of what a witness says. Bullard v. Universal Underwriters Ins. Co., 609 S.W.2d 621 (Tex. App.-Amarillo 1980, no writ). Even when we view the weight and inferences from the evidence differently from the hearing officer, we cannot substitute our judgment for his when challenged findings are supported by some evidence of probative value and are not against the great weight and preponderance of the evidence. Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ dism'd). Findings of Fact 3, 5, and 6 and Conclusion of Law 2 are not against the great weight and preponderance of the evidence.

The decision and order are affirmed.

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Joe Sebesta
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Robert W. Potts
Appeals Judge