APPEAL NO. 92086
FILED APRIL 13, 1992

On February 3, 1992, a contested case hearing was held in _____, Texas, with (hearing officer) presiding. The hearing officer determined that the respondent, the claimant in this appeal, did sustain a compensable injury on _____, in the course and scope of her employment as a chicken packer for (employer), and that she had given notice of injury to her employer within 30 days after its occurrence.

The carrier has asked that we review this determination, and find that the claimant did not sustain an injury in the course and scope of her employment, and further that she failed to notify her employer of the injury within 30 days. The carrier argues that there is, essentially, no evidence or insufficient evidence to support certain findings of fact and conclusions of law regarding these issues.

DECISION

We find that there was sufficient probative evidence to support the findings and conclusions of the hearing officer, and affirm his decision.

By agreement, the issues heard at the hearing were whether an injury occurred within the course and scope of employment, whether the employer had been notified of injury in accordance with the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. Art. 8308-5.01 (Vernon's Supp. 1992) (1989 Act), and whether there was medical evidence to support occurrence of a work-related injury.

The claimant had worked for the employer for 13 months prior to her injury on _____. Her job was to pack chicken pieces in boxes according to customer order, weigh the boxes, and stack them on pallets. She stated that the boxes varied in weight. She was injured moving a 50-lb. box from the weighing table to the pallet, during mid-morning. Claimant testified that she told her supervisor, Mr. L, about the injury immediately and asked for time off to see a doctor. However, she was not allowed time off from work to see a doctor until two days later, because there was a lot of work to do. She took chiropractic treatments from Dr. G for two months. She stated that she brought some bills to Mr. L to see if the company would pay for them, and at that point, approximately April 25th, was referred to (clinic) by the employer. She stated that she had not worked since April 25th, and her back was extremely painful.

Claimant confirmed that, at her request, she was moved to a processing line the week following her injury, because her back hurt. She stated that there were times prior to her injury when persons she understood to be representatives of the insurance company would visit the employer, and at these times the employer would direct men to move the boxes of chicken from the scales to the pallets.

Mr. L testified through deposition. He stated that claimant asked for time off to see

the doctor in February but he was unaware that her problems related to an injury. He stated that it was company policy that boxes weighing over 15 lbs. were to be loaded by two men in the area designated to do this. He conceded that it was possible that claimant had not followed this policy. He stated that claimant brought some doctor bills to him and was angry because medical insurance would not pay for them, so he referred her to a company-sponsored clinic. He acknowledged that her job was changed in February, because claimant purportedly was "unhappy" as a packer.

Records from Dr. G basically consist of entries or bill receipts showing when treatments were made to claimant. However, two receipts from Dr. G dated in April indicate "severe lumbo-sacral strain." Records from the clinic show a diagnosis of a lower abdominal muscle strain. However, records of an MRI of the lumbar spine, taken May 10, 1991, at the request of a Dr. R, show a "central and right paramedian disc herniation at L 4/5 with desiccation and degeneration in the disc." Dr. R's records of examination conducted for several months also remark on lower right side abdominal pain.

An affidavit from claimant's immediate supervisor, Ms. M, states that she was not informed by claimant at any time that she had a work-related injury.

The hearing officer is the sole judge of the weight, relevance, materiality, and credibility of the evidence presented at the hearing. Art. 8308-6.34(e). His 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 Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). A court of appeals in reviewing and analyzing a "no evidence" point of error should and must consider only the evidence and reasonable inferences therefrom that support the findings of the trier of fact, and disregard inferences and evidence that are adverse to that determination. Highlands Insurance Co. v. Youngblood, 820 S.W.2d 242 (Tex. Civ. App.-Beaumont 1991, no writ). In reviewing for a point of "insufficient evidence," if the record considered as a whole reflects probative evidence supporting the decision of the trier of fact, we will overrule a point of error based on insufficiency of the evidence. Youngblood, *supra*. The claimant has the burden of proving, through a preponderance of the evidence, that an injury occurred within the course and scope of employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The testimony of a claimant can be sufficient to establish that an injury occurred. Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989). Any conflict in testimony of medical witnesses is a matter to be resolved by the trier of fact. Highlands Underwriters Insurance Co. v. Carabajal, 503 S.W.2d 336 (Tex. Civ. App.-Corpus Christi 1973, no writ). The purpose of the notice to an employer is to give the insurer an opportunity to investigate the facts surrounding the contended injury, and this purpose can be fulfilled without the need of any particular form or manner of notice. DeAnda v. Home Insurance Co. , 618 S.W.2d 529 (Tex. 1980).

In this case, the hearing officer was obviously persuaded that claimant was injured

by lifting a 50-lb. box of chicken. There was not much evidence to controvert that the injury occurred as claimant stated. There was medical evidence supportive of injury to the claimant. Further, he determined, not just from what she told Mr. L, but from the circumstances surrounding the injury, that the employer had notice within the 30-days prescribed by statute. Finding no reversible error in the findings of fact and conclusions of law addressed by the carrier, we affirm.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Robert W. Potts
Appeals Judge