

APPEAL NO. 92089  
FILED APRIL 24, 1992

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 February 12, 1992, (hearing officer) presided at this hearing in \_\_\_\_\_, Texas, with the consent of all parties since appellant, claimant herein, lived over 75 miles from (city), Texas. He found that claimant did not suffer a compensable injury in (date of injury), nor did he tell his employer within 30 days of an injury. Claimant asserts that Findings of Fact No. 6 and 7 together with Conclusions of Law No. 3 and 4 are against the great weight and preponderance of the evidence and asks that the decision be reversed and benefits be provided under the Act.

DECISION

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

Claimant worked for (employer) for five months as a bobcat operator until May 10, 1991, when laid off. In mid-April (no specific date was ever alluded to) claimant testified he was in a squatting position pulling a form that had been used to enclose concrete when he backed into a reinforcing rod sticking up off the ground about one foot. He said it hurt his back. JV saw it happen, and he and JV went and told his supervisor, PH. PH offered to see about a doctor for claimant but claimant declined saying it did not appear to be too bad. Claimant allowed that JG was also working there, did not see the accident, but did see claimant tell PH. Claimant did not see a doctor right away because he had to work to support his family and because his back did not get worse for awhile. He first saw a doctor in July after his attorney referred him to one. This doctor found a contusion and strain. Tests showed some disc dryness and some disc bulging at one level.

JV testified he saw the accident but cannot remember the date either. He went with claimant to tell PH and heard the conversation. JG agreed that he did not see the accident but saw claimant tell PH at a distance of about 50 feet; he knew claimant was telling PH because he saw him pull up his shirt and point to his back. He also said claimant was alone with PH when he saw this take place.

PH testified that he worked for employer during the time frame in question as a foreman but no longer works for employer. He has had accidents reported to him which he then reported to the office of employer. He never heard of an injury to claimant and neither claimant nor anyone else ever reported such an injury to him. After mid-April, the time of the alleged accident, he worked in proximity to claimant but he never heard him say his back hurt. When claimant was laid off on May 10, 1991, it was part of a reduction of force and not because he could not work.

Carrier declared that the first it heard of an injury was when it got a copy of the notice

of claim in August 1991.

The hearing officer is the trier of fact. He is the sole judge of the weight and credibility of the evidence. Article 8308-6.34(e) of the 1989 Act. He may not only weigh the testimony of claimant, JV, and JG against that of PH, but may also weigh that of JV that he accompanied claimant to tell PH against that of JG that he saw claimant tell PH with no one else present. The hearing officer is to resolve such conflicts. Perry v. Perry Bros., Inc., 753 S.W.2d 773, (Tex. App.-Dallas 1988, no writ). In addition claimant was an interested witness and the hearing officer was not required to accept his testimony about the injury. Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. App.-Texarkana 1977, no writ). He may also believe only a portion of the testimony of a witness. Bullard v. Universal Underwriters Ins. Co., 609 S.W.2d 621 (Tex. App.-Amarillo 1980, no writ). He could believe claimant was injured, but not by backing into a reinforcing rod on the job. Johnson v. Employers' Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). In considering all the evidence, he could weigh the fact that claimant did not see a doctor until July and never stopped working.

The hearing officer had sufficient evidence before him in the unwavering testimony of PH to find that no notice of injury was given within thirty days. Once he decided that PH was telling the truth about receiving no notice from claimant, he could conclude that the credibility of claimant was questionable, especially in view of all the evidence before him. Findings of Fact No. 6 and 7 were not against the great weight and preponderance of the evidence. Conclusions of Law No. 3 and 4 merely reflect those two findings and are therefore also sufficiently supported.

On a sufficiency of the evidence question this panel will set aside the decision of the hearing officer only if it is clearly wrong and manifestly unjust. We affirm.

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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