APPEAL NO. 92097
APRIL 30, 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 11, 1992, a hearing was held in (city), Texas, with (hearing officer) presiding. He found that respondent, claimant herein, was injured in the course and scope of employment and is entitled to benefits. Carrier considers the decision to be against the great weight and preponderance of the evidence and objects to Finding of Fact No. 4 and Conclusion of Law No. 3.

DECISION

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

Claimant had worked at (employer) as an appraisal assistant for approximately one year when she injured her back. In describing the incident she said that she felt a pinch in her hip while seated as she reached under the top of her desk and pulled herself and her chair to the desk. The chair was described as deep, wide, hard, with no back support, and with rollers that stuck. Time of injury was said to be between 4:00 p.m. and 4:30 p.m. on Friday, (date of injury). She initially thought it was nothing, but within minutes felt pain characterized as a charley horse. She then walked around and told a coworker that her leg hurt and mentioned the chair. That weekend, the leg restricted her activities and she called her office early Monday morning and then went to see a doctor. In describing the injury to her boss, Mr. H, she said she had been at her desk when she got a pain in her hip and leg. She said she told him she did not know what it was, but she was going to see the doctor. She added that her boss then told her that she only had 24 hours to report a job injury.

The coworker verified that claimant told her the day of the injury that her hip hurt but could not recall claimant making any reference to her chair. In his testimony, claimant's boss said that no mention of a job injury was made in the telephone conversation he had with claimant on July 8, 1991. He added that she said she did not know how she hurt herself and asked for his recommendation of a doctor to see; he gave her no name. He disputed that he ever said she had only 24 hours to report a job injury and denied that the conversation mentioned workers' compensation. He acknowledged that in a telephone conversation on July 22, 1991, claimant told him that she must have hurt herself on the job. On cross-examination, he said she has been a dependable employee.

Approximately one week before the injury claimant had been on vacation near (park) with her family and another couple. Her testimony that she did not injure herself during that time was verified by TGE, who was with her at the time. Claimant acknowledged that her trouble now is with the same disc, (L4-L5), on which she had surgery in 1987.

The first doctor claimant saw after the 1991 injury was Dr. M who was on the providers list of her husband's group insurance carrier. Stating that the medication he gave her nauseated her, she asked for a referral and went to see Dr. S, on Tuesday, July 9, 1991. She next saw Dr. K on Wednesday, July 10, 1991. (Dr. K was one of the physicians she saw in connection with her back problem culminating in back surgery in 1987). Dr. K recommended hospitalization, and she entered the hospital on Sunday, July 14, 1991. While in the hospital receiving therapy and undergoing tests, she learned that a workers' compensation claim could still be made after passage of 24 hours. After her release from the hospital on July 19, 1991, she called her boss on July 22, 1991, and told him she had called on the prior Friday and left word that she was filing a workers' compensation claim. She added that her husband's insurance company stopped paying medical bills because it viewed the incident as covered by workers' compensation.

The hearing officer is the sole judge of the weight and credibility of evidence. Article 8308-6.34(e) of the 1989 Act. He could assign little weight to claimant's boss' testimony that claimant asked for recommendations as to a doctor or that claimant told him she did not know what caused the pain. He could also assign little weight to claimant's assertion that her boss told her she needed to act within 24 hours if the injury were job related. The hearing officer was free to believe only some or all of either's testimony. Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). Claimant's claim of inception of pain at work is not inconsistent with what was recorded by the doctors she saw. In addition claimant's coworker basically verified her assertion that she complained on the job that her back hurt. The question of injury, even when emanating from an act associated with sitting, has been examined and found to fall within the purview of the trier of fact. Northern Assurance Co. of America v. Taylor, 540 S.W.2d 832 (Tex. Civ. App.-Texarkana 1976, writ ref'd n.r.e.) held that even without medical testimony, the issue of whether a hernia could be precipitated by raising oneself from a seat was for the trier of fact to decide.

Finding of Fact No. 4 is sufficiently supported by the evidence as is Conclusion of Law No. 3. When the challenged finding is supported by some evidence of probative value and is not against the great weight and preponderance of the evidence, we will not substitute our judgment for that of the hearing officer. Ashcraft, *supra*. We affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Philip F. O'Neill
Appeals Judge