

APPEAL NO. 92111  
FILED MAY 6, 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 19, 1992, (hearing officer) presided at this hearing in (city), Texas. He found that claimant, appellant herein, failed to show that she was injured in the course and scope of employment. Appellant states only that the preponderance of the evidence shows a compensable injury occurred and asks that the decision be reversed.

DECISION

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

Appellant had worked approximately seven months in housekeeping and the laundry for the (employer), when she stated that she injured her right arm down to the tips of her fingers. Several times in her testimony she said she injured herself pulling large numbers of wet sheets that were rolled together out of the large hotel washing machines. On cross-examination, she said she also bumped her hand against the side of the washing machine. She was adamant that she had never had a problem with her arm or hand before.

Appellant also testified that on (date of injury), 1991, she told "Ms. D" (last name unknown), whom she characterized as the laundry supervisor, she hurt her hand. She said she told "Mr. E," (whose real name was ES, director of housekeeping) on March 20, 1991 that her arm was aching. She said she never told Mr. E that she had hurt herself at home. Her last full workday for this employer was on April 28, 1991, and on May 1 or May 2, 1991, she first saw a doctor, (Dr. H). She used health insurance to pay the medical bill, but said she told Dr. H that she hurt her arm at work. She subsequently saw another doctor who diagnosed carpal tunnel syndrome, and a third doctor thereafter operated on her right wrist.

Two telephone statements were introduced by appellant. The first was of (BM) who said she worked with appellant. In February she said that appellant told her that her wrist hurt but did not say whether she injured it at home or at work. This witness said that appellant later told her that she hurt her wrist in the laundry. The second statement was made by (JW) who also worked with appellant. JW says that appellant told her that her hand started to hurt when she had to take linen from the washing machines. She knew of no activities outside of work that could have caused the injury, but appellant told her that she had hurt the "upper part" of her right arm, "the shoulder," in the past and always had problems with that. JW added that appellant said her hand got worse as long as she worked in the laundry.

Appellant also called Mr. E as an adverse witness. He identified (DH) as the laundry supervisor and said it was her duty to report to him any injury in that area, and he would record it. After hearing of any accident in the hotel, an investigation would be done. He

acknowledged that DH does not have the authority to enter an accident in his accident log so that if she alone heard of one and did not report it, it would not appear in the log. DH was described as very reliable; since she did not report an injury to appellant, she did not know of one. His log contained no entry for an injury to appellant, and no investigation was done. Mr. E did recall one time when appellant had a wrap on her hand at a regular morning inspection, most probably on March 15, 1991. He said he inquired about her hand and whether she could work. She replied, according to him, that she hurt it at home and would be able to work. After the date stated for the injury, (date of injury), she did her regular work without complaint until she quit working after April 28, 1991.

Respondent's one exhibit was a statement by Dr. H in answer to respondent's questions in which she said that appellant did not specify how the hand problem began.

The request for review of appellant contains four attachments labeled "Exhibit A" through "Exhibit D." All relate to appellant and are medically related except one. The dates on "Exhibit A" through "D" respectively are May 1, 1991, May 16, 1991, June 12, 1991, and July 1, 1991. No explanation as to why these documents could not have been available to introduce at the contested case hearing on February 19, 1992, was offered. The appeals panel is limited by Article 8308-6.42(a) of the 1989 Act to consideration of the record developed at the hearing and the written request for review and response thereto. In considering the request for review, such consideration does not extend to evidence attached thereto that was not made a part of the record. See Texas Workers' Compensation Commission Appeal No 91132 (Docket No. HO-AO86992-01-CC-HO42) decided February 14, 1992. No remand is necessary in this instance, and neither the documents submitted nor reference to them in the request for review itself were considered in this review.

The hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34(e) of the 1989 Act. He could believe either the appellant, who said she reported the injury to Mr. E on March 20, or Mr. E, who said she did not report a job injury to him. He could also believe appellant did not tell Mr. E on March 15 that she hurt her hand at home, or he could believe that appellant told Mr. E on March 15 that she injured it at home. He could believe appellant's two coworkers whose statements indicated that appellant told them she hurt her wrist at work. He could also believe that appellant told coworker JW that she had injured her right arm before as opposed to appellant's testimony that she had never had a problem with that arm and had not told JW that she had. It is questions of credibility such as this that the hearing officer as trier of fact is required to judge. See Taylor v. Lewis, 553 S.W.2d 153 (Tex. App.-Amarillo 1977, writ ref'd n.r.e.). He could believe that appellant's wrist was injured, but was not injured on the job. See Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). He could also weigh that appellant continued to work for over a month after the stated date of injury and did not see a doctor until May 1 or 2. Contrary to appellant's testimony, he could believe appellant did not tell Dr. H she hurt her

wrist at work, as indicated by that doctor's statement.

The burden of proof was on appellant to show that the injury originated in the work and happened while she was engaged in furthering the affairs of the employer. See City of Dallas v. Bradford, 646 S.W.2d 302 (Tex. App.-Dallas 1983, writ ref'd n.r.e.). No one witnessed the injury, and while a claimant's testimony alone can in many cases support a finding as to causation, it may be viewed as presenting an issue for the trier of fact even when not contradicted. See Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. App.-Beaumont 1976, writ ref'd n.r.e.). The appeals panel will not substitute its judgment for that of the trier of fact when the challenged finding is supported by some evidence of probative value and is not against the great weight and preponderance of the evidence. Perry v. Perry Bros Inc., 753 S.W.2d 773 (Tex. App.-Dallas 1988, no writ). 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