APPEAL NO. 92150
FILED MAY 26, 1992

On March 9, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. Mr. R determined that the claimant, (claimant), the appellant herein, had not sustained an injury in the course and scope of his employment as a custodian with (respondent).

The appellant asks that the decision be reviewed and reversed. Specifically, the appellant complains of the findings and conclusions made by the hearing officer, and provides his rebuttal to specific evidence raised by the respondent. It is appellant's position that he was injured on the job on (date of injury), and that he so informed his supervisor before he was terminated from his job.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. Texas Workers' Compensation Act, TEX. REV. CIV. STAT. Art. 8308-6.34(e) (Vernon Supp. 1992) (1989 Act). 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 upon insufficiency of evidence. Highlands Insurance Co. v. Youngblood, 820 S.W.2d 242 (Tex. Civ. App.-Beaumont 1991, n.w.h.). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The claimant has the burden of proving, through a preponderance of the evidence, that an injury occurred in 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.). A claimant must link any contended physical injury to an event connected to the employment. Johnson v. Employers' Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Although an accident does not have to be witnessed to be compensable, the trier of fact is not required to accept the testimony of the claimant. Presley v. Royal Indemnity Insurance Co. , 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

The employer in this case is a junior college that is self-insured as a political subdivision for workers' compensation insurance, in accordance with authority granted under Article 8309h (Vernon Supp. 1992). Succinctly, appellant alleged he was injured on (date of injury), when he picked up a 100-lb. barber chair and mat in order to clean the floor under it. There was no witness to the event. Appellant continued to work, was absent October 7th, went back to work and was terminated on October 9th for leaving work early. The record indicates that he had received a number of previous warnings about leaving early. Appellant's testimony indicates both that he either saw his supervisor, Mr. L, two

times before termination, on October 3rd and 4th, or only on the 4th (when he received a reprimand). In any case, appellant agreed that he did not mention to the supervisor that he was injured on the job. Appellant says that when he called in ill on October 7th, he told the supervisor's secretary, Ms. H, that he was injured on the job. By affidavit, this was denied by the secretary. The record indicates that formal written notice of injury was given to respondent on October 18th, after appellant was terminated.

Medical records in evidence state that appellant was diagnosed with degenerative disc disease (report of Dr. S) and that he had low back pain for 5-6 years. (Initial Medical Report, Dr. H). Respondent argued at the contested case hearing that this is a disease of life and did not result from the incident claimed by appellant.

There is sufficient probative evidence to support the decision of the hearing officer that the appellant was not injured in the course and scope of employment, and we therefore affirm his decision.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Joe Sebesta
Appeals Judge