APPEAL NO. 92163

On March 27, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that the claimant, (claimant), the appellant herein, had not sustained an injury on (date of injury), in the course and scope of his employment as a truck driver with (employer).

The appellant asks that the decision be reviewed and reversed, under what is, in essence, a challenge to the sufficiency of the evidence supporting the determinations of the hearing officer. The appellant complains that his supervisor, (LC), knew about the injury within five minutes after it happened. Respondent states that there was sufficient evidence to support the determination of the hearing officer.

DECISION

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

Appellant, who was periodically employed on a seasonal basis by the employer, stated that he injured his back on (date of injury), as he pushed a dolly with cotton bales onto a truck. He said he reported this within five minutes to his immediate supervisor, LC, who just laughed at him. This happened at 9:30 a.m. Appellant said he worked the rest of the day, as well as the next day, but just stopped going to work as of December 1, 1991. Appellant stated that he did not experience any back pain prior to the day of injury or complain about pain to anyone. Appellant first went to a doctor, (Dr. S), on December 20th, and did not go earlier because he did not have money. He stated that he understood that

workers' compensation would pay medical bills for injuries that occurred on the job, and the money he lacked was for transportation to the doctor.

LC states that he knew appellant for 12 to 13 years and considered him to be a good worker. LC said that there were other workers, including appellant's brother, who had been injured on the job and received benefits. LC stated that all injuries reported to him were in turn promptly reported as required. He stated that he saw appellant limping around at work on Monday, November 25th. He said that when he asked appellant what was wrong, appellant indicated that he had injured himself that weekend while having sex.LC said appellant was still limping around that Tuesday, and asked to take off November 27th and was given permission to do so.

LC stated that it was unusual for appellant to have just stopped coming to work. But he denied that appellant reported any injury to him on (date) or at any time before he stopped coming to work.

Mr. (LN), the owner of employer, testified that he was unaware that an on-the-job injury was claimed by appellant until a doctor's office called on December 20th. When he investigated the accident with LC, he learned from him that appellant initially stated another reason for his back injury. LN said that LC had worked for him for 19 years. He also agreed that appellant was a good worker.

Medical records indicate that appellant has no disc herniation, but exhibits degenerative changes in his spine attributed in part to osteoporosis and osteoarthritis.

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's Supp. 1992) (1989 Act). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or 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 at the work place. Johnson v. Employers' Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-1961, no writ). Although an accident does not have to be witnessed to be compensable, and the claimant's testimony alone may establish an the occurrence of an injury, Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989), the trier of fact is not required to accept the testimony of the claimant, or of a medical opinion based upon the claimant's recitation of an injury, but may weigh it along with other evidence. Williams v. Westchester Fire Insurance Company, 414 S.W.2d 210 (Tex. Civ. App.-Fort Worth 1967, no writ).

The job of the hearing officer is to resolve conflicts in testimony. In this case, there was sufficient evidence from which the hearing officer could conclude that appellant was not injured on (date) as he claimed. The decision is affirmed.

dm\06-29\92

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Susan M. Kelley

Appeals Judge

CONCUR:

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Joe Sebesta

Appeals Judge

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Robert W. Potts

Appeals Judge

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