

APPEAL NO. 92252

On May 4, 1992, a contested case hearing was held in (city), Texas, (hearing officer) presiding as hearing officer. She determined that the appellant did not receive a right ankle injury that arose out of and in the course and scope of her employment and that the appellant did not establish good cause for failing to give timely notice of any injury. Appellant urges, in essence, that the evidence is sufficient to establish that she was injured in the course and scope of her employment and that she has shown good cause for failure to timely notify her employer. Therefore, appellant requests that we reverse the decision of the hearing officer and render a new one in appellant's favor.

DECISION

Finding the evidence sufficient to support the findings, conclusions and decision of the hearing officer, we affirm.

The summary of testimony and pertinent evidence at the hearing is fairly and succinctly set out in the decision and order of the hearing officer and is adopted in large part. Appellant worked for (employer) which carried workers' compensation coverage with the respondent. She was a "charge nurse" and had worked for the employer for some six years. On (date), she was told she was being transferred to a different unit in the hospital to which she took vigorous exception. She attended a meeting with the Director of Nursing and the Director of Human Resources on (date of injury), concerning her transfer and her position on the matter. She testified that as she left this meeting and exited the hospital she twisted her right ankle.

After several meetings, the appellant was assigned back to the original unit effective upon returning to work after her annual training leave as a reserve army nurse. She took a leave of absence to complete the army training and subsequently to take care of her mother who had suffered a stroke. This occurred between the period from June 4, 1991 to July 14, 1991. She described the reserve training as field training where she simulated nursing wounded soldiers in the field. The duty also included treating some injuries and handling medication.

Appellant worked at the employer's hospital on July 15, 16, and 17, 1991. From July 18th until (date of injury), the appellant telephoned her employer each work day and reported that she was sick. She testified that in an August 1991 telephone conversation she reported the (date of injury) work related ankle injury to her supervisor (Ms. M). She stated that the reason, and her good cause, for not reporting the injury any earlier was her involuntary job change and all the difficulties this caused and the dispute with the hospital. In a transcribed statement, Ms. M stated that appellant told her that she was taking sick leave for an ankle injury, but indicated that the injury was not work related. Ms. M stated that appellant did not report the (date of injury) ankle injury as a work related injury until (date of injury).

The Director of Human Resources, (CM), testified that the appellant received medical and wage continuation benefits for her right ankle from employer's group health insurance plan. She further stated that none of the health care providers who evaluated the appellant's right ankle called the employer to verify workers' compensation coverage, and that employer did not receive medical reports for appellant's right ankle until after (date of injury).

Appellant testified that she did not recall noting on any medical forms that she was claiming her right ankle injury to be work related. She stated that she had no idea that the employer's group health insurance did not cover work related injuries. However, CM testified that appellant meticulously documented her entitlement to medical and sick leave benefits under employer's group health insurance plan. She further stated that appellant knew the importance of timely completing injury forms for work related injuries reported to her by any workers that she supervised. CM noted that appellant did not report a work related ankle injury until (date of injury), when the employer called her to inform her that her sick leave benefits had been exhausted.

The Assistant Director of Human Resources testified that appellant called him on (date of injury) and reported a (date of injury) work related ankle injury. The Employer's First Report of Injury or Illness (TWCC-1) was completed on October 28, 1991. Appellant filed this workers' compensation claim on November 5, 1991.

The appellant stated she went to a doctor on July 22, 1991 because of her ankle. In a "TO WHOM IT MAY CONCERN" statement dated August 7, 1991, signed by (Dr. G), the following report concerning the appellant is made:

The above named patient was seen in my office on the (sic) July 22, 1991. She stated that she was having problems with her right ankle. The patient was treated for the condition. She was under my care from the time being of July 22, thru August 1, 1991.

In a report dated September 12, 1991, from River Oaks Imaging and Diagnostic the following report on a RIGHT ANKLE MRI AND AP/LATERAL SCOUT FILMS is made:

- 1.Examination of the right ankle demonstrates no asymmetric widening of the talo-crural joint. The talar dome is intact. The tibial plafond is intact. There is no significant talo-crural effusion. The anterior talo-fibular, posterior talo-fibular, and calcaneo-fibular ligaments are intact. The tibio-calcanean and the posterior tibio-talar ligaments are intact.
- 2.The extensor tendons, peroneus brevis and longus tendons, flexor tendons, and Achilles tendon are intact.
- 3.There is no soft tissue mass or hematoma. There is no occult ganglion cyst.

4. No abnormality is demonstrated within the tarsal sinus.
5. The subtalar joint, talo-navicular, and calcaneo-cuboid joints are unremarkable.
6. There is no acute bony injury.

IMPRESSION: Unremarkable right ankle MRI.

Imaging Diagnostics reported mild soft tissue swelling, laterally, on October 17, 1991. Other medical records indicate a normal bone scan reported on November 6, 1991. Appellant testified she could perform routine household chores and get around although her ankle was still swollen and painful. She could not point to where any doctor states she cannot return to work; however, she felt she needed more diagnostic testing to resolve the injury to her ankle.

From the testimony and documentary evidence, the hearing officer concluded: (1) the preponderance of the evidence establishes that appellant did not receive a right ankle injury that arose out of and in the course and scope of her employment on (date of injury); (2) the preponderance of the evidence establishes that appellant did not receive a work-related injury on (date of injury), that caused disability; and (3) that she did not establish good cause for failing to timely notify the employer of a work related injury. Our review of the entire record discloses that there is certainly sufficient evidence to support the determinations of the hearing officer in this case. The hearing officer saw and heard the witness testify, and as the sole judge of the weight and credibility of the evidence she determined to be relevant and material (Article 8303-6.34(e) TEX. REV. CIV. STAT. ANN. Art. 8308-6.34(e) (Vernon's Supp. 1992)), she could believe all, part, or none of any witness's testimony and resolve conflicts and inconsistencies. Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). The testimony of a claimant only presents a factual issue for the trier of fact and may be believed or disbelieved as may any other witness's testimony. Highland Insurance Co. v. Baugh, 605 S.W. 2d 314 (Tex. Civ. App.-Eastland 1980, not writ). Clearly, her findings, conclusions and decision are not so against the great weight and preponderance of the

evidence to be clearly wrong or unjust, thereby warranting any action to set aside the determinations. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986). We find absolutely no basis upon which to disturb the decision rendered in this case.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge