APPEAL NO. 92298

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 April 23, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He found that notice of injury was not given within 30 days of the alleged injury, that there was no actual notice of injury, and that there was not good cause shown for failure to notify timely. Appellant takes issue with relevant findings of fact, says the credible evidence is on her side, and states that the decision is against the great weight and preponderance of the evidence.

DECISION

Finding that the decision is supported by sufficient evidence of record, we affirm.

Appellant, employed by (employer) since February 9, 1991, claimed that she hurt her lower back on (date of injury), picking up a bucket of potato salad while at work. Employer provides workers to companies and places workers in permanent employment. Appellant said she was working at the convention center when she hurt herself on (date of injury). No one saw her at the time. Her father picked her up that day and she told him of the problem. She testified that she called employer the next day, (date), and talked to (Ms. C), who worked with computers, about hurting herself. Her father said she told him of her injury when he picked her up. He advised her to call employer on (date). Appellant saw one doctor on May 13th (Dr. G) and another on July 1, 1991 (Dr. W). On July 1st, Dr. W recorded her history of injuring herself at work on (date of injury), and found her lower back to be tender; he referred to a repetitive lumbar strain injury. At the hearing appellant said she went to the doctor on May 13th because social security sent her. In her statement of July 2, 1991, she had said she never worked for the employer after the accident, but in her testimony, admitted that she had worked briefly for the employer in March 1991. On March 25, 1991, appellant had been "terminated" for not appearing for a placement interview arranged for her.

Respondent denied that it had any knowledge of an injury prior to June 25, 1991, the day appellant called in to report her injury of (date of injury). Respondent, by its business records showed that appellant did not work on (date of injury) and that no one worked at the convention center on (Month) (date) or (date of injury). It demonstrated the minutiae of entries that were made in regard to personnel and work assignments by (Ms. C) and argued that if any call had been made to (Ms. C) on (date), she would have entered a reference to it in her computer record. Respondent pointed out that the wage statement, Exhibit F, was made the day of the telephone call reporting injury, June 25th, and that such would have been done on (date) had a call been received. In referring to appellant's work in early March, an administrative assistant for employer stated that if appellant had even hinted at an injury, the company would not have assigned her to any work until she had a full release from a doctor. *See* Articles 8308-5.01 and 5.02 of the 1989 Act that require notification of injury be given an employer no later than the 30th day after it happens unless the employer

or insurance carrier had knowledge of the accident or the claimant had good cause for failure to notify.

In answer to questions posed by the hearing officer at the end of the hearing, appellant said her back hurt for three or four weeks after the injury. When asked why the delay in treatment, appellant said she strained her back again in March, but still gave essentially no answer for waiting until May 13th, when she saw Dr. G. She acknowledged that the social security administration sent her to see Dr. G in May.

The hearing officer is the sole judge of the weight and credibility of evidence. Article 8308-6.34(e) of the 1989 Act. In judging credibility he could consider appellant's statement of the date she was injured and her prehearing statement that she did not work again for employer after the incident, both of which were controverted. He could weigh appellant's failure to respond to some questions, including his own, in considering the responses she provided to other questions. He could consider the way in which she sought medical care, and he could choose to believe that respondent's records were thorough and accurate. The appeals panel will not interfere with the trier of fact's resolution of evidentiary conflicts or his conclusions as to weight and credibility, unless, after viewing all the evidence in a factual sufficiency case, we determine that the decision is against the great weight and preponderance of the evidence. *See* Old Republic Ins. Co. v. Diaz, 750 S.W.2d 807 (Tex. App.-El Paso 1988, writ denied).

We affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Susan M. Kelley
Appeals Judge