APPEAL NO. 92302

A contested case hearing was held at (city), Texas, on June 12, 1992, (hearing officer) presiding as hearing officer. He determined that the appellant did not sustain an on-the-job injury which arose out of and in the course and scope of her employment, did not have disability because there was no compensable injury and that, therefore, the appellant was not entitled to benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). The appellant disagrees with several of the hearing officer's findings based upon the state of the evidence and asks for a second contested case hearing. Appellant also attached several documents she desires us to consider. Respondent urges the evidence is sufficient to sustain the findings and decision of the hearing officer and states that it is inappropriate to attempt to bring new evidentiary matter with her request for review.

DECISION

Finding the determinations made by the hearing officer to be sufficiently supported by the evidence of record, we affirm.

As indicated, appellant submitted several documents with her request for review. These documents are not a part of the record and are not considered in this decision. Article 8308-6.42(a)(1); Texas Workers' Compensation Commission Appeal No. 92027 (Docket No. redacted) decided March 27, 1992. Our perusal of the documents indicates they would not effect the outcome of the case in any event.

This hearing officer's Decision and Order fairly and succinctly sets forth pertinent evidence brought before the contested case hearing. After listening to the record of proceedings, reviewing the documentary evidence, the request for review and the reply thereto, we adopt the statement of evidence for purposes of this decision. Briefly, the appellant claims that while cleaning a room in a new school gym on (date of injury), she suffered an injury because she breathed concrete dust particles and fell on a tile floor she was cleaning. She had worked since January 3, 1991, around saw dust and concrete dust. She worked all day on (date of injury), the day of the incident and (date) although sore. She went to the hospital emergency room on the evening of (date), complaining of chest pains. She stated her injuries were bronchitis, pleurisy and injuries to the left side of her body. Chest x-rays on (date) and 15th were normal. Other medical records did not substantiate the injuries described by appellant or show any causal relationship between her claimed injury and her employment. There was testimony from her sister that appellant had been congested and coughing the week prior to (date of injury) and that she had previously experienced some bronchitis. There were other employees working in the same area at the same time but none mentioned any problem with breathing concrete particles. The appellant has not worked since (date of injury) (there was evidence that the particular job she was working on ended on (date), and other employees were laid off) and has not attempted to obtain employment. Although there is no medical record of being taken off work, the appellant states she was told not to work for four days by one doctor and that she

was told she needed to "stay off work" to give her foot time to heal by another doctor. The medical records indicate a running history of high blood pressure problems and also indicate the appellant did not go to any doctor for a period of approximately 6 months from "4-6-91" to "10-12-91."

The findings with which the appellant takes exception concern the hearing officer's determination that medical records show x-rays of appellant were normal, that one medical record indicates the appellant injured her left side subsequent to (date) and that the evidence did not establish a causal connection between the injury and the employment. *See* Texas Workers' Compensation Commission Appeal No. 92202 (Docket No. redacted) decided July 6, 1992.

A claimant has the burden of proving the claimed injuries were suffered while acting in the course and scope of employment. Reed v. Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). A claimant's testimony, although that of an interested witness, does no more than raise a factual issue for the fact finder and such testimony may be believed or disbelieved in total or in part. Highlands Insurance Co. v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). He is charged with the responsibility of resolving conflicts and inconsistencies in testimony and other evidence and making findings of fact. *See* Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Article 8308-6.34(g). Only if the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would it be appropriate to set aside or otherwise disturb his findings and determinations. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref's n.r.e.). That is not the situation before us. The evidence is sufficient to support the questioned findings of the hearing officer and his decision and order. Accordingly, the case is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Susan M. Kelley
Appeals Judge