APPEAL NO. 92304

On June 2, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer determined that the claimant, (claimant), appellant herein, failed to prove by a preponderance of the evidence that she sustained an injury to her back in the course and scope of her employment with (employer), respondent herein, a self-insured political subdivision, and denied appellant benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act).

Appellant contends that the hearing officer's decision is unjust and that she presented sufficient evidence that she was injured at work. Appellant requests another contested case hearing. Respondent contends that the appeal was not timely filed, that the appeal should be denied for failure to state grounds for relief, and that the evidence supports the hearing officer's findings and decision.

DECISION

Having reviewed the request for review, response, and hearing record, we conclude that the evidence supports the findings and decision of the hearing officer, and that the decision is not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. We affirm.

Appellant's request for review was timely filed in accordance with Article 8308-6.41(a) and applicable rules of the Texas Workers' Compensation Commission (Commission). Commission records indicate that the decision was mailed to the parties on June 25, 1992. Appellant's request for review is postmarked July 3, 1992. The request was filed within 15 days of receipt. Respondent's contention concerning the timeliness of the appeal is overruled.

We find that appellant's request for review is adequate to invoke review by the appeals panel. *See* Texas Workers' Compensation Commission Appeal No. 91131 (Docket No. redacted) decided February 12, 1992.

Appellant testified that she does not speak English. The hearing was translated by a Spanish-speaking interpreter. On (date of injury), appellant was employed as a kitchen helper in the employer's school cafeteria. Appellant said that while she was working on that date she slipped on water that had leaked out of the dish washing machine and hurt her back. She said she did not fall to the floor because she grabbed hold of a table. Appellant said that (LM), a coworker, saw her slip. Appellant further testified that on the day of the accident she told (LM) and her supervisor, (DS), about hurting her back at work, and that at the end of her work day she was crying. Appellant said she started seeing (Dr. L), for her back injury in (date), and that she last saw him in February 1992. Appellant denied having any back problems prior to the date of the alleged accident at work. She said she was not able to communicate with her coworkers because she did not speak English.

(LM) testified that she and appellant always spoke to each other in English and that appellant never indicated that she had any problem understanding English. She said that she did not see appellant slip or fall at work on (date of injury). This witness further stated that when she asked appellant why she was crying on (date of injury), appellant told her that she had hurt her back in an accident prior to going to work for the employer. This witness said that appellant did not tell her she had slipped at work.

(DS), appellant's supervisor, testified that her conversations with appellant were always conducted in English and that appellant appeared to understand English. This witness said that she did not see appellant slip at work, that appellant did not report to her that she had slipped at work, and that no other employee reported an accident involving appellant. This witness said that she first learned of appellant's claim when she was contacted by a chiropractor on an unspecified date. This witness acknowledged that appellant had told her that the dish washing machine was leaking several days before the date of the alleged accident, that there was water on the floor from the leak, and that appellant was crying at the end of her work day on (date of injury). However, this witness said that appellant only told her at that time that she did not feel like mopping, and did not tell her she had slipped or fallen at work.

Respondent introduced into evidence the affidavits of several of appellant's coworkers. Two of them stated that appellant had told them that she had hurt her back a long time ago, and two others said they had seen appellant after the date of the alleged accident and that appellant appeared to be fine and in no pain.

A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this Act." Article 8308-1.03(10). The claimant has the burden of proving that she was injured in the course and scope of her employment. Reed v. Casualty & Surety Company, 555 S.W.2d, 377, 378 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility to be given the evidence. Article 8308-6.34(e). Although the hearing officer was entitled to believe appellant's testimony, she was not required to do so. In this case, the testimony of respondent's witnesses, and especially that of (LM), called into question the credibility of appellant, and the hearing officer may have concluded not to believe appellant's testimony concerning her claimed work-related injury. *See* Montes v. Texas Employers' Insurance Association, 779 S.W.2d 485, 488 (Tex. App.-El Paso 1989, writ denied); Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611, 613 (Tex. Civ. App.-Texarkana 1977, no writ). We conclude that there is sufficient evidence to support the hearing officer's findings and decision, and that her findings and decision are not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. *See* Montes, *supra*; Presley, *supra*.

We decline to consider the letter from appellant's automobile insurance company which she attached to her request for review because it was not made a part of the hearing

record. Article 8308-6.42(a)(1) limits our review of the evidence to the record made at the hearing. *See* Texas Workers' Compensation Commission Appeal No. 92254 (Docket No. redacted) decided July 29, 1992. We note that with the exercise of due diligence the information in the letter probably could have been obtained in time for the hearing, and that the information in the letter would probably not have affected the hearing officer's decision had it been presented at the hearing. *See generally* Jackson v. Van Winkle, 660 S.W.2d 807 (Tex. 1983).

The decision of the hearing officer is affirmed.

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Robert W. Potts
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Joe Sebesta
Appeals Judge