APPEAL NO. 92305

On June 9, 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, did not sustain an injury in the course and scope of her employment with her employer, (employer) on (date of injury), and denied her benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act).

Appellant disagrees with the finding of fact that she did not sustain an injury on (date of injury), and with the conclusion of law that she did not sustain a compensable injury on that date. Appellant contends that the evidence shows that she did sustain a compensable injury on (date of injury), and requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent, the employer's workers' compensation insurance carrier, responds that the decision is supported by both legally and factually sufficient evidence, and requests that we affirm the decision.

DECISION

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

The employer sells food and beverages at the city airport. Appellant had worked for the employer for about a month prior to (date of injury). About 8:00 a.m. that day, appellant said she went into the walk-in cooler to get pickles for salads she was preparing. Appellant testified that she forked the pickles out of the pickle container and into another container and then turned to get the lid to the pickle container which she had put on the opposite shelf. When she turned, appellant said she slipped on pickle juice that was on the floor and fell to the floor on the left side of her buttocks and back injuring her back. She further testified that the pickle juice splashed onto her pants and into the bottom shelf area.

Appellant said she left the cooler, put the pickles on a table, and immediately told (MS), who was her supervisor, and (TB), a coworker, that she had slipped and fallen in the cooler. She said she told (TB) that she was not feeling good and went home about two hours later. When she got home she had her mother call her supervisor and inform him that she was hurt and was going to the hospital. The supervisor met appellant and her husband at the hospital. Appellant said that she was given "injections" at the hospital for inflammation and pain, and was prescribed medications. The only document regarding medical treatment which was put into evidence was a "medical release" dated (date of injury) which appears to be signed by a doctor and which indicates that appellant is to be off work for three days and then see an "ortho" for follow-up if she is no better in three days. Appellant said that x-rays taken at a later date at another hospital were "normal." Appellant testified that in 1987 and 1989 she had sustained back injuries in work-related slip and fall

accidents while working for previous employers.

(MS), appellant's supervisor, testified that appellant told him the morning of (date of injury) that she had slipped and fallen in the cooler, but that she said she was fine when he asked if she needed treatment. He said that appellant finished the work that had been assigned to her that day before she went home. This witness said that after appellant told him she had fallen, he looked in the cooler and saw a puddle or spot of pickle juice (he smelled it to find out what it was) just inside the cooler door. He testified that the spot of juice did not appear to have been disturbed in any way, nor did it look like someone had slipped or fallen in the juice. This witness said he met appellant at the hospital the same day as the alleged accident after he received a call from someone who told him appellant was injured and needed treatment. He said he assumed that appellant was hurt and wanted to make sure she got proper treatment. This witness further testified that a few days before the alleged accident, appellant had been upset because he had reduced the number of hours she would work due to a personnel problem he had with her.

(TB) testified that when appellant came out of the cooler she was "rubbing her butt" and told him that she had slipped and fallen in the cooler and had hurt her butt. He said that after she told him this, he saw a small spot of pickle juice on the floor of the cooler, but said that it did not appear to have been disturbed in any way nor did it appear that anyone had slipped in it. He did not see any liquid on appellant's clothing. He also said that since he works near the cooler and can hear movement inside of it, he would have heard something if appellant had fallen down. He said that he did not hear any "racket" when appellant was in the cooler. This witness further testified that on the morning of (date of injury), and prior to the time appellant said she had fallen in the cooler, appellant told him that she had been dancing the night before, that she had gotten into a fight, that her back and butt were sore, and that she did not feel like working. This witness also said that the weekend prior to the alleged accident, appellant had spoken to someone named "Joy" at work about the reduction in her work hours, that appellant appeared to be very upset, and that appellant had said "that bitch will pay, all of them will."

Two other coworkers, (Ms. C) and (Ms. F), testified that appellant told them that she had fallen in the cooler. Both of these witnesses said that the spot of juice on the cooler floor did not appear to have been stepped in or fallen in. (Ms. C) said appellant indicated she was not hurt; (Ms. F) said that appellant indicated she was hurt. (Ms. F) also testified that just before appellant went home on the day of the incident, appellant indicated that she was very upset about her reduced work hours and said to this witness "That is okay. I will break even with the company."

Under the 1989 Act, an "injury" means "damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm." Article 8308-1.03(27). 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, 535 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). As the trier of fact, the hearing officer weighs all the evidence and decides what credence should be given to the whole, or to any part, of the testimony of each witness, and resolves conflicts and inconsistencies in the testimony. Gonzales v. Texas Employers Insurance Association, 419 S.W.2d 203, 208 (Tex. Civ. App.-Austin 1967, no writ); Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer is not bound to accept the testimony of the claimant, an interested witness, at face value. Garza, *supra*. Weighing all the evidence in support of as well as against the finding that appellant did not sustain an injury on (date of injury), we cannot say that such finding is so contrary to the great weight and preponderance of the evidence as to be manifestly unjust. *See* Reed, *supra*; Griffin v. New York Underwriters Insurance Company, 594 S.W.2d 212 (Tex. Civ. App.-Waco 1980, no writ). The finding that appellant did not sustain an injury on (date of injury), supports the hearing officer's conclusion that appellant did not sustain a compensable injury on that date.

The decision of the hearing officer is affirmed.

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Robert W. Potts
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Philip F. O'Neill
Appeals Judge