

## APPEAL NO. 92308

A contested case hearing was held at (city), Texas on April 27, 1992, (hearing officer) presiding as hearing officer. The hearing was held on remand directed in Texas Workers' Compensation Commission Appeal No. 92006 (Docket No. redacted) decided February 19, 1992. The hearing officer determined that the respondent suffered disability from August 28, 1991, until November 13, 1991 and was entitled to temporary income benefits (TIBs) for that period and entitled to applicable medical benefits. Appellant finds fault with several findings of fact and conclusions of law and asks that we reverse the decision of the hearing officer and render a new decision denying benefits.

### DECISION

Determining that the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we affirm. We note that different inferences might reasonably be drawn from the evidence but this is not a sufficient basis to reverse a decision where there is some probative evidence sufficient to sustain a decision. Texas Workers' Compensation Commission Appeal No.92253 (Docket No. redacted) decided July 29, 1992; Texas Workers' Compensation Commission Appeal No. 92172 (Docket No. redacted) decided June 19, 1992; TWCC Appeal No. 92158 (Docket No. redacted) decided June 5, 1992.

The respondent's testimony at the original hearing and the hearing on remand was to the effect that she sustained an injury on the job on (date of injury). This is documented in the employer's records. She did not miss any work because of the injury; however, she was "laid off" along with other workers on March 25, 1991. She testified that her back continued to hurt her but that she did not seek any medical attention until August 28, 1991. This was after her back started "hurting real bad" when she turned from her back to her side on a couch while watching television the previous evening. She stated that she called the employer and was given permission to go to a doctor. She was told by the doctor that she would not be able to work for a month. Although she had been drawing unemployment compensation from March until August, the unemployment compensation was stopped because of her inability to accept employment from her job related injury. A statement from the respondent in the Texas Employment Commission files, which was included in the contested case hearing on remand, provides as follows:

I started having back spasms on Aug. 28, 1991 the same day I went to the doctor. I had hurt my back around (date of injury) or (date), (year) and reported it (date) but I did not go to a doctor then but I was off work some on the 7th and off the 8-9-10 and worked the next two week with my back hurting and was laid off March 25, 1991. I contacted (employer) when my back started hurting this time and was told I had reported it before so go to the doctor and file on workers comp. I have been unable to work since Aug. 28, 1991. I had x-rays of my back Sat. 8-31-91 and was told today I had a ruptured disk. I have been referred to another doctor to see him October 7th, 1991 so I will not know

until then if I will have to have surgery or not. I will inform TEC when I have been released for work again.

An MRI report in the record states the following opinion:

Mild to moderate degenerative disc desiccation at the L4-L5 and L5-S1 with no significant disc bulge or focal disc abnormality seen at either of these levels. Otherwise essentially negative lumbar spine MRI.

Evidence in the file shows that the respondent was released to return to work as of November 13, 1991 by her doctor. (Respondent has not contested the period of disability found by the hearing officer.) She testified that she again received unemployment compensation and that her back hurt her at times but not at other times. She is generally able to perform house and yard type activities. No medical records were introduced into evidence by the respondent.

The appellant disputes the following findings of fact and conclusions of law:

4. The Claimant sustained a compensable work-related injury to her lower back on (date of injury), when she swung around in a chair while flagging some wires at work.
7. On August 28, 1991, Claimant sought medical treatment for acute low back spasm for her work related injury.

\* \* \* \* \*

3. As of August 28, 1991, the Claimant had disability pursuant to the Act.
4. Such disability continued until November 13, 1991, at which time the Claimant was no longer suffering from disability pursuant to the Act.
5. The Claimant is due temporary income benefits pursuant to the Act for the time period of August 28, 1991 until November 13, 1991.

There is no merit to appellant's challenge to the first listed finding of fact above. This issue was specifically resolved in our previous decision in this case and was not an issue on remand. Appeal No. 92006, *supra*. The only issue remanded involved the two-pronged matter of disability and TIBs.

The dispute with regard to the second finding of fact above centers around the question of whether the respondent's back spasm and treatment on August 28, 1991 was related to the respondent's on-the-job injury or some intervening cause. There was no medical evidence on this matter; rather, the respondent testified that the effect (recurring back pain) of her job related injury continued on into August when it became worse when she turned to her side while resting on a couch. The hearing officer quite apparently gave

credit and weight to this testimony, which she had the authority to do (Article 8308-6.34(e)), and was satisfied that there was a causal connection between the two events. While a claimant has the burden to establish the occurrence of a job related injury (See Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex.Civ.App.-Beaumont 1976, writ ref'd n.r.e.)), a claimant's testimony alone may establish the occurrence of a job related injury. See Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex 1989); Texas Workers' Compensation Appeal No. 92111 (Docket No. redacted) decided May 6, 1992. The hearing officer could believe all or part or none of the appellant's testimony (Taylor v. Lewis, 553 S.W.2d 153 (Tex.Civ.App.- Amarillo 1977, writ ref'd n.r.e.)) and we accept the hearing officer's resolution of any conflicts or inconsistencies in the evidence or testimony in absence of any compelling reason to the contrary. Texas Workers' Compensation Commission Appeal No. 91080 (Docket No. redacted) decided December 20, 1991.

Disability under the 1989 Act is defined as "the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury." Article 8308-1.03(16). There is probative evidence that the respondent suffered disability from August 28 to November 13, 1991.

Determining that there is sufficient basis for the hearing officer's findings of fact and conclusions of law, the decision 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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Robert W. Potts  
Appeals Judge