APPEAL NO. 92315

A contested case hearing was held on June 12, 1992, in (city), Texas before hearing officer (hearing officer). The two issues were whether the respondent (claimant below) injured his knee in the course and scope of his employment, and whether appellant (insurance carrier below) was relieved of liability because respondent failed to timely report his injury to his employer. The hearing officer held that respondent twisted his knee and tore the cartilage on (date of injury) while performing work for the (employer), and that respondent reported the injury to his supervisor the next day.

In its appeal, appellant disputes the hearing officer's characterization of several events as contained in the statement of evidence in the decision and order. Appellant also claims that the findings of fact and conclusions of law relating to the existence and report of an on-the-job injury fail to take into consideration certain evidence in the record. No response to the appeal was filed.

DECISION

Upon review of the record, we affirm the decision and order of the hearing officer.

Respondent was employed by employer as an assistant maintenance manager for an apartment complex. On (date of injury) he testified that he was moving a washing machine up a flight of stairs on a dolly when it "went crooked." He stepped down to prevent the washer from falling down the stairs and felt a sharp pain when he twisted his right knee. The next morning he said he told his supervisor, (DK), that he had hurt his knee while moving the washing machine and that it was swollen with a knot on the inside of his right leg. He said he did not mention the injury to (MK), the apartment manager and DK's supervisor, because he had reported it to DK. He continued to work at the apartment complex for about three more months, performing his usual duties although at a slower pace. Respondent said he mentioned problems with his knee to DK on several occasions.

On March 1, 1992, while doing work at a friend's house, respondent said he twisted his knee and felt pain while descending from a stepladder. At that point, he said, he decided that something was wrong with his knee and that he should see a doctor. He denied that he fell off the ladder. Appellant saw (Dr. S) who diagnosed torn cartilage and recommended orthoscopic surgery, which was performed two months later. Appellant said he had previously injured his right knee in 1987 and had had two ligaments replaced.

Appellant said he contacted DK on Monday, March 2nd, to tell him he needed to see a doctor about his knee, but that DK began yelling at him because he had not been reachable the previous day. Appellant acknowledged that he was supposed to be on call on Sunday, but that he had turned his beeper off after he hurt his knee. He came into work on Wednesday, March 4th, and tried to talk to MK about what had happened to his knee and what his doctor had said, but he said DK came in and began yelling and cursing at appellant.

Respondent's wife testified that she remembered respondent complaining of an injury to his knee on (date of injury), because that was her mother's birthday. She said respondent continued to complain about his knee over the following months and had to put ice on his knee when he came home at night.

MK testified she is the property manager at the apartment complex where respondent worked. She said she was first made aware that respondent had an injury when he called her on March 2nd to tell her he had fallen off a ladder the previous Sunday and was going to see a doctor. The following Wednesday, when he brought in the note from his doctor, was the first time she heard that the injury had occurred at work on (date of injury). She said she had never been informed of this before, and that she had never noticed respondent limping or favoring his leg in any way. She said DK was agitated that day because respondent had failed to answer his beeper on Sunday, but that he was only in the room briefly and was not cursing.

DK, the apartment maintenance supervisor, denied that respondent had reported an injury to him on (date); he said that under those circumstances he would have sent respondent to see the manager, MK, and to a doctor. He said respondent, in casual conversation only, had mentioned a prior football injury to his knee. On Monday, March 2nd he said respondent called him to say he had fallen off a ladder at a friend's house and was going to go see a doctor. He said he did not see or talk to respondent on Tuesday. On Wednesday when he and respondent were in MK's office he found out that respondent was claiming the injury occurred at work on (date of injury). He denied that respondent ever mentioned a current knee injury or showed him that the knee was swollen.

Appellant disagrees with several statements contained in the hearing officer's statement of evidence, stating that the facts in the record demonstrated otherwise. The 1989 Act does not require that a statement of evidence be included in the hearing officer's written decision. Article 6.34()g). Notwithstanding the hearing officer's rendition of the evidence contained in such a summary, the ultimate question for our determination is whether, upon review of the record, the hearing officer's findings of fact and conclusions of law are supported by sufficient record evidence.

Appellant would have us reverse the decision below, claiming that the greater weight of the credible evidence, as contained in the testimony of DK and MK, would support a contrary finding. It is true that the testimony of respondent was controverted by that of appellant's witnesses. However, the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308- 1.01 *et seq*. (Vernon Supp. 1992), provides that the hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Article 8308-6.34(e). As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the testimony, Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ), and may believe all or part or none of the testimony of any one witness, Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The decision of the hearing

officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

After review of the record, we find that there was sufficient evidence to support the decision of the hearing officer, and that the decision was not against the great weight or preponderance of the evidence. That decision is accordingly affirmed.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Susan M. Kelley
Appeals Judge