APPEAL NO. 92333

A contested case hearing was held at (city), Texas, on June 9, 1992, (hearing officer) presiding as hearing officer. He determined that the appellant had not made a timely notification of her injury to either her permanent or temporary employer, that she did not have good cause for such failure, and that neither the permanent or temporary employer had actual knowledge of the injury claimed by the appellant. Accordingly, benefits were denied under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq* (Vernon Supp. 1992) (1989 Act). Urging that the hearing officer erred in his findings of fact, conclusions of law, and decision, the appellant ask that we reverse the decision and render a new one in its place. The respondent seeks our affirmance.

DECISION

Determining the evidence sufficient to support the finding, conclusions, and decision of the hearing officer, we affirm.

As stated at the outset of the hearing, the single issue under dispute was whether the appellant timely reported an injury to her employer. The hearing officer's Decision and Order fairly and sufficiently sets out the pertinent evidence in the case and is adopted for purposes of this decision. Briefly, the appellant worked for a temporary employment service (permanent employer) and was located at a plastics molding plant (temporary employer). She claims that she injured her rib cage from late September to (date of injury) by repeatedly bending over a waist high machine to clean a plastic stamping or cutting machine. She claims that sometime before (date of injury) she told a supervisor at the plant about her injury but acknowledges she did not report it to the temporary hiring service who was her employer. She claims she did not know the procedure to report an injury to her employer, although she admitted that she knew the procedure when at a prior job location. Two supervisors, one the first level supervisor and the other the next immediate supervisor at the plastics molding plant, both testified that the appellant never reported an on the job injury to them. There was testimony that the appellant was terminated because of absenteeism and tardiness and it was only after that that she claimed she was injured on the job. Appellant testified that she was pregnant although she did not tell anyone at work and that she knew it was the bending over the machine to clean it from plastic parts that caused her rib cage to hurt. However, she waited until her OBGYN doctor's appointment in late October to seek medical care and her doctor told her that the rib cage pain was not due to the baby. She was referred to another doctor who told her the problem involved the cartilage in her rib cage. The permanent employer did not know of any claimed injury until it was informed by the carrier about the claim on December 9, 1991. The appellant presents apparently inconsistent theories as to notice: (1) notice was given to a supervisor on or before (date of injury); and (2) she did not know she had a work related injury and did not know the injury was not trivial until her doctor's appointment.

Article 8308-5.01 of the 1989 Act requires that notice of an injury be given to the employer not later than the 30th day after the date the injury occurs or in the case of an

occupational disease, including repetitive trauma, notice must be given not later than the 30th day after the date the employee knew or should have known that the injury may be related to the employment. The hearing officer determined that the appellant was aware of her claimed job related injury on (date of injury) and that by November 8th she had not notified "any person in a supervisory or management position with either (permanent employer) or (temporary employer) that she claimed an injury" and that neither employer had actual knowledge of an injury. There is sufficient evidence in the record to support these determinations. 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). As the fact finder, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark N.J., 508 S.W.2d 701 (Tex.Civ.App.-Amarillo 1974, no writ). We find no basis in this case to disturb

his findings, conclusions, or decision. Texas Workers Compensation Commission Appeal No. 92232 (Docket No. redacted) decided July 20, 1992.

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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Susan M. Kelley
Appeals Judge