APPEAL NO. 92348

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.10 through 11.10 (Vernon Supp. 1992). On July 6, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He held that claimant, respondent herein, was injured in the course and scope of employment at (employer) on (date of injury) and gave timely notice to the employer. The employer contested compensability at the hearing since the carrier did not, and employer appealed asserting that certain findings as to an injury on the job were incorrect and that conclusions of law as to injury on the job and notice were also incorrect.

DECISION

Finding that the decision is based on sufficient evidence of record, we affirm.

Respondent had worked for employer almost five years when she states that she injured herself on (date of injury). She works on an assembly line and at the time in question was crimping the ends of 75-foot hoses, weighing between nine and 10 pounds, and putting them in boxes. As she turned to her left to put the hose in a box, she said she felt as if something came loose in her knee; she felt it down to her toes--a tingling and numbness in her left leg but not pain at that time. She continued to work and only told a new coworker that something had happened to her leg. The next day the leg and her back hurt and on Monday, (date), she was still in pain and called a doctor. She called work and said she would not be in because of a doctor's appointment. She went to see (Dr. R) who took her off work and gave her a note to that effect. She left his office and, with her husband, went to the plant. She saw (ES), a personnel manager, gave her the note and told her of the injury on (date of injury). ES told her that since she had not told her supervisor, the injury could not be treated as workers' compensation. Respondent left. She was seen by other doctors, including a second opinion doctor for back surgery and had back surgery on May 29, 1992.

The employer called (MW), not (M W) as appeared in the BRC report, ES, and (DL) to testify. They pointed out that respondent did not report her injury at the time or call in to report it to her supervisor, MW. MW testified that he looks for problems in his employees and did not see one in respondent on Saturday, (date of injury). In addition, a handbook that covers safety and the need to report injuries immediately was stressed. An investigation was said to have produced no knowledge of respondent having hurt herself on (date of injury). DL referred several times to the high regard for safety exhibited in the plant and how workers' compensation rules were followed. ES acknowledged that respondent did come to her office on (date) with the physician's note and told her she injured herself on the job. There was no dispute that ES was the person in management to whom a supervisor would have reported an injury had the supervisor been told first. DL pointed out that when respondent was told that the incident could not be handled as workers' compensation, she filled out paperwork for disability insurance. In the paperwork she alluded to her back having hurt her previously, in (month) 1991 and earlier in 1992. DL

pointed out that the injury to respondent's back could have happened before (date of injury). Respondent pointed out that her back problem prior to the incident was on the right side of her back, while this injury was to the left leg and left side of the back.

Physicians records showed that respondent promptly sought medical care, adequately described her injury, and indicated the need for surgery. In addition employer wrote to three physicians that treated respondent asking questions of how the injury may have been caused. Those responses were not dispositive to the issue but certainly did not rule out that the injury of (date of injury) could have contributed to the necessity for back surgery.

The hearing officer is the sole judge of the weight and credibility of evidence. Article 8308-6.34(e) of the 1989 Act. He could believe respondent's testimony concerning her injury of (date of injury), notwithstanding that she did not immediately report it to her supervisor and no one else knew of it. *See* Highlands Ins. Co. v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ). He could resolve any conflict between respondent's claim of injury and evidence of her prior back problems by believing respondent. *See* Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). While the hearing officer is not required to accept the testimony of an interested witness, such as respondent (*see* Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 [Tex. Civ. App.-Texarkana 1977, no writ]), he could believe all of her testimony. *See* Bullard v. Universal Underwriters Ins. Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The evidence presented by respondent in her testimony, her manner of seeking medical care, and her report of the injury two days later to employer provided sufficient evidence to support Findings of Fact Nos. 4 and 5 which employer questions and which read as follows:

4.Claimant sustained a left sciatica and left lumbosacral nerve root compression injury on Saturday, (date of injury) while assembling and packaging new water hoses for Employer.

5.Claimant sustained her injury while in the course and scope of employment with Employer on Saturday, (date of injury).

Appellant did not take issue with the finding of fact that stated that notice was given by respondent on (date). (As a person in a managerial position, ES was a proper authority to whom to report injury under the 1989 Act. Article 8308-5.01 (c) of the 1989 Act states: "The notice required by Subsection (a) of this section may be given to the employer or any employee of the employer who holds a supervisory or management position." An employer's rules concerning notice do not change the requirements of the statute.) Conclusions of Law Nos. 3 and 4 that find the carrier liable for workers' compensation benefits and that respondent proved her case are sufficiently supported by the findings of fact. We note that issue is taken with a conclusion of law as to notification but that the finding of fact that addressed that issue was not disputed. Since the finding on notice is not disputed and because there is sufficient evidence of notice in the record, Conclusion of Law

No. 2, stating that notice was timely, is adequately supported. The appellant also takes issue with the hearing officer's Statement of Evidence as not being thorough. Article 8308-6.34(g) requires the hearing officer to make findings of fact and other determinations, but does not require that any Statement of Evidence be provided.

Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

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Philip F. O'Neill
Appeals Judge