APPEAL NO. 92360

On July 7, 1992, a contested case hearing was held in (city), Texas, (hearing officer) presiding as hearing officer. He determined the appellant did not sustain an injury within the course and scope of his employment and that he did not report an injury to his employer within 30 days of the alleged on-the-job injury. Accordingly, he denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Appellant asks that we reverse the decision of the hearing officer and states that "[a]ll the evidence to support the Claimant's position that he did, in fact, sustain a compensable injury on (date of injury) (sic) while in the course and scope of his employment for (employer) was not admitted to the Contested Case Hearing, either for evidentiary reasons which the Claimant disputes, or because witnesses were unavailable to the Claimant due to unforeseen work schedules of the witnesses. Claimant did not receive information regarding the nonappearance of witnesses until the morning of the hearing, and could not, therefore, file a timely Motion for Continuance. The response refutes the issue raised by the appellant and urges that the Decision and Order of the hearing officer are supported by the great weight and preponderance of the evidence.

DECISION

Finding no sound basis to disturb the decision of the hearing officer and concluding there is sufficient evidence to sustain his determinations, we affirm.

The evidence concisely set out in the Decision and Order of the hearing officer is adopted herein. Briefly, the appellant testified he worked for the employer as a painter/ sandblaster when, on (date of injury), a ladder he was working on slipped causing him to fall. He stated he hit a valve with his stomach, felt pain and had to rest about 20 minutes before he went back to work. He stated he subsequently told his supervisor about the fall on a couple of occasions. The supervisor testified and stated that he did not observe any fall or injury and that the appellant never mentioned being injured to him or anyone else that he knew of. He stated he no longer worked for that employer and that the first he knew of any claimed injury was the first part of this year (1992) when he was contacted by his then former employer to inquire if he knew anything about an injury to the appellant in (date of injury). The appellant stopped working for the employer on July 25, 1991 because the job ended. He states that although he felt pain during the time, he was ready to go to work again and was waiting for a call from the employer. In any event, he did not seek any medical treatment of any kind until November 1991 when he saw a doctor in (city) who apparently prescribed several medicines. He later saw two doctors, apparently in Texas, and was operated on for what appears to be a duodenal hernia. The one medical report in the file does not relate the appellant's condition to any injury or to any specific event. This report, which noted a hernia, gave an assessment of "Mild Gastritis" following an esophagogastroduodenoscopy procedure.

It is noted that the record of the contested case proceeding does not indicate whatsoever that the appellant made known a desire to call any witness who was not available or that any type of continuance was desired. To the contrary, before the hearing

adjourned the hearing officer specifically asked counsel for both sides "have either one of you been denied or deprived of the opportunity to present anything at this hearing that you felt you should present?" The appellant's counsel specifically replied "no, we have not." It is a little late in the day to suggest in a request for review that, if authorized another hearing, "[i]t is the belief" that further evidence can be developed and "[c]laimant would show that he would be able to either produce witnesses which would develop further the evidence necessary to prove his claim, or produce admissible statements from such witnesses upon rehearing." *See* Texas Workers' Compensation Commission Appeal No. 91050 (Docket No. redacted) decided November 27, 1992; Texas Workers' Compensation Commission Appeal No. 92027 (Docket No. redacted) decided March 27, 1992. *See also* the discovery provisions in Article 8308-6.33 and Tex. W.C. Comm'n, TEX. ADMIN. CODE § 142.13 (TWCC Rule 142.13).

This case, in essence, hinged on the credibility of the witnesses. The hearing officer is the sole judge of the weight and credibility of the witnesses. Article 8308-6.34(e). It is his responsibility to sort out any conflicts and inconsistencies in the evidence and to make findings of fact. Texas Workers' Compensation Commission Appeal No. 92252 (Docket No. redacted) decided July 27, 1992, and cases cited therein. A claimant's testimony only raises a factual question for the trier of fact and such testimony may be believed or disbelieved. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex.Civ.App.-Amarillo 1973, no writ). Only were we to find, which we do not, the hearing officer's determinations to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would we disturb his decision and order. Texas Workers' Compensation Commission Appeal No. 92232 (Docket No. redacted) decided July 20, 1992.

The decision and order are affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Philip F. O'Neill
Appeals Judge