APPEAL NO. 92368

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp 1992). On June 23, 1992, a contested case hearing was held with (hearing officer) presiding. He determined that claimant, appellant herein, was not injured in the course and scope of employment and that she did not have good cause for failing to timely notify the employer of the allegation. Appellant asserts that findings of fact three, four, five and six are incorrect and asks that she be granted benefits.

DECISION

Finding that the decision of the hearing officer is sufficiently supported by the evidence, we affirm.

Appellant worked as a seamstress, sewing the footpads on the soles of children's sleeping pajamas. A bundle of pajama bottoms, weighing six pounds (employer) to not over 10 pounds (witness BM) to 20-25 pounds (appellant), is placed in the seamstress' work area and she has to pull it downward to work with. Appellant testified that it was hard to pull the individual bottoms out of the package, but BM said that she shook them loose to work with. Appellant was asked if she were injured on (date of injury), the day specified in her claim. She said no, she just had some pain on that day. She was then asked if she had a problem prior to (date of injury), and she again said, "no", that only from time-to-time her hand would feel numb, but she did not have pain.

On (date), appellant made an appointment to see Dr. W on (date of injury). On (date of injury), the plant manager, RB, after being told that she was going to the doctor for her arm, called appellant and her supervisor into his office. He states that he asked her if her problem was work-related and she said no, but she then wanted to know whether employer would pay for it anyway. RB said he would not pay for it if not work-related. Appellant stated that RB tried to pressure her into not filing a workers' compensation claim. Supervisor, PJ, who accompanied appellant to see RB, remembered no attempt by RB to get appellant not to file a workers' compensation claim. PJ, consistent with all witnesses called by appellant, could not recall appellant ever saying, or indicating, that her arm problem was aggravated by the job.

Appellant paid for her doctor's care with health insurance. RB testified that it was not until the insurance carrier notified him that he learned of appellant's relating the medical problem to the job. While the date the employer was contacted was not specified, it was at some point after November 15, 1991, when health insurance could no longer be used for her care. Appellant did not assert that her medical problem was not serious at first but later became so, nor did she assert that the employer had indicated that he would take care of the workers' compensation claim for her. She only stated in essence that if RB had that attitude, then she wouldn't file workers' compensation.

On (date of injury), appellant saw Dr. W. His note of that visit indicates that appellant was in for evaluation of a painful left shoulder and upper arm bone, and this had been noted for two months. His impression was bursitis with osteoarthritis of the AC joint. He also said she had a bone spur on her shoulder. At this visit, the follow-up that occurred in three weeks, and during four additional appointments into January 1992, Dr. W never recorded that appellant's work caused or aggravated the condition or that appellant reported that her work contributed to her problem. Dr. W did put her on light duty in October 1991 and took her off work for a period of time. In a letter written by Dr. W on May 6, 1992, he states that appellant has osteoarthritis and that it is not caused by the work. He then says only that her work can aggravate that preexisting condition.

PJ testified that appellant's discussion about her arm problem never caused her to connect it to the job. She added that after seeing the doctor, appellant said that it was arthritis. Appellant only told her it hurt; she never said that it was work-related. AM testified that she is a quality supervisor but is not appellant's supervisor. She heard nothing about appellant being hurt on the job but recalls that appellant's doctor told her she had arthritis. She did accompany appellant to see if she could do another job at the plant because of the arthritis. BM said that appellant did not say she was injured at work. Appellant did say at one point that she couldn't work because of the arm, but she always complained about something, according to BM.

The hearing officer is the sole judge of the weight and credibility of the evidence, Article 8308-6.34(e), 1989 Act. He could believe RB when he said that appellant said her arm problem was not work-related. He could note that appellant paid for her doctor's visits by using health insurance. He could also consider that witnesses appellant called were consistent with RB's story when they said that appellant never indicated that the work caused her problem. Similarly, Dr. W never noted a history of work relationship to the shoulder pain he discussed in his doctor's notes into January 1992. This evidence sufficiently supports the hearing officer's finding that the appellant did not injure herself while working for the employer.

The appellant indicated that she did not file a workers' compensation claim right away because of the way RB reacted when she met with him. Her time of filing the workers' compensation claim is not the real question because she has one year to do so under Article 8308-5.01(b), 1989 Act. Had the requirement for notice to the employer within 30 days been met, she then had up to one year after the injury to file a claim. In this instance, there was some indication that the filing of the claim triggered the notice to the employer. The hearing officer was not arbitrary in determining that good cause did not exist for the delay beyond 30 days based on the rationale given by appellant. Similarly, the hearing officer had sufficient evidence before him from both the appellant's supervisor, PJ, and plant manager, RB, to conclude that appellant did not relate the injury to the work when she told PJ and RB of her problem within 30 days of its occurrence. Conclusions of law that an on-the-job injury was not proven, that timely notice was not given, and that good cause did not exist for the failure to timely notify were all based on adequate findings of fact and are supported by sufficient evidence.

The decision of the hearing officer is affirmed.

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Joe Sebesta
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Philip F. O'Neill
Appeals Judge