APPEAL NO. 92376

On June 18 and 19, 1992, a contested case hearing was held in (city), Texas, (hearing officer) presiding as hearing officer. He determined that the appellant did not sustain an on-the-job injury on (date of injury) and that she was not entitled to benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Appellant disagrees with the hearing officer's finding and conclusion that the appellant did not sustain a compensable injury and urges that the testimony of the witnesses does not support the hearing officer. Respondent's position is that the hearing officer was correct and that the totality of the evidence presented at the hearing was overwhelmingly in support of the hearing officer's findings of fact and conclusions of law.

DECISION

Finding the evidence sufficient to support the findings, conclusions and decision of the hearing officer, the case is affirmed.

The considerable testimony and other evidence presented at the hearing is very thoroughly and fairly set out in the hearing officer's Decision and Order. After a full review of the record and exhibits in this case, we adopt and incorporate herein the hearing officer's Statement of Evidence. Succinctly, the appellant claimed she was injured at work while bending over a table cutting curtains. She states she felt or heard a "pop" in her back but did not say anything to anyone at the time. This occurred on a Friday and she says her back got worse over the weekend while she was staying at the home of her boyfriend's mother. The following Monday she claims she told her supervisor that her back was hurting but did not mention how she hurt herself. The company nurse saw her that day and the nurse's notes indicate the appellant denied that she had suffered an injury but that her back hurt. The appellant was told to go to her doctor and she saw a doctor on that Wednesday. His impression was back strain, R/O herniated disk (sic) disease, carpal tunnel syndrome, bilateral, and cumulative trauma disorder. He placed her on restricted activity with a follow-up in three weeks. Subsequently, the claimant went to work on Tuesday of the following week. The testimony of appellant and several other employees was in conflict as to when and how she reported that her injury was job related.

At the time in question, the appellant was living with a roommate but testified she did not see her the weekend following her injury. The roommate, who also worked for the same employer, gave a different version of the particular weekend. She stated that the appellant was at the apartment over the weekend and that there had been a party where appellant became intoxicated. She stated that appellant fell several times during the evening, once from a high ledge to the top of the dishwasher and then to the floor. The roommate also stated that during that weekend she walked in on the appellant when she was engaged in somewhat forced sexual intercourse with her boyfriend. Later the appellant told her that her back was hurting because of her sexual activities with her boyfriend. The appellant denied the roommate's version of events and reiterated that she was at the home of her

boyfriend's mother. This person was called and stated that appellant stayed with her the entire weekend. There was some evidence that the appellant had a reputation for not telling the truth.

Without question, the evidence in this case was in conflict with diametrically opposing testimony between the witnesses in a number of instances. There was considerable conflict as to when and how the appellant's back injury was reported, and some inconsistencies in the testimony of several witnesses concerning what transpired on the Monday following the injury. Clearly, the hearing officer had his work cut out for him in sifting through all the evidence before him to determine the facts of the case. Recognizing that the hearing officer is the sole judge of the relevance and materiality of the evidence as well as its weight and credibility (Article 8308.6-34(e)), we can not say his findings were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. *See* Pool v. Ford Motor Co. 715 S.W.2d 629 (Tex. 1986). To the contrary, there is sufficient probative evidence to support his determinations. As the trier of fact, the hearing officer may believe all, part or none of the testimony of witnesses and resolve conflicts and inconsistencies in the evidence. Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.- Amarillo 1988, writ denied); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). A claimant's testimony does no more than raise a question of fact for the finder of fact and it may be believed or disbelieved. Highlands Insurance Co. v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ): Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973 no writ). We find no basis to disturb the findings, conclusions and decision of the hearing officer. Accordingly, the case 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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Philip F. O'Neill
Appeals Judge