APPEAL NO. 92397

On July 9, 1992, a contested case hearing was held in (city), Texas, (hearing officer) presiding as hearing officer. She determined that the appellant had sustained an injury to her back while in the course and scope of her employment but that she had not reported her injury to her employer within 30 days of the injury and did not prove by a preponderance of the evidence that she had good cause for such failure. Accordingly, she did not award benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Appellant urges error in the hearing officer's conclusion that she failed to report her injury within 30 days. She also states that a named person would verify her injury and that management was informed. Respondent urges that the evidence is sufficient to support the hearing officer's determination and further objects to the appellant's failure to effect proper service of her request for review. Service was ultimately made on respondent.

DECISION

Determining that the findings, conclusions and decision of the hearing officer are not so against the great weight and preponderance of the evidence to be clearly wrong or manifestly unjust, we affirm.

Initially, we note that proper service on the respondent was not effected by the appellant at the time of her filing of this request for review. This does not affect the timeliness of the request for review or otherwise prevent its consideration. It may extend the time for the response to be filed. *See* Texas Workers' Compensation Commission Appeal No. 91120 (Docket No. redacted) decided March 30, 1992.

The Statement of Evidence in the hearing officer's Decision and Order thoroughly and fairly set forth the pertinent evidence in this case and is adopted and incorporated herein. Briefly, the appellant testified she hurt her back on (date of injury), while helping a customer lift a carton of dishes. She states she told a coworker she hurt her back and then went to a rest area because she was nauseous. When she came out of the rest area she states she saw two employees, both of whom apparently occupied supervisory level positions, who she told that she had hurt her back. She was told to go home and lay down. Appellant, being in pain, attempted to contact a doctor and was referred to one by a hospital. When filling out a form at the doctor's office she did not mark that her injury was work related because, according to her testimony, she was afraid she would be fired since she had experienced difficulties with the store manager before. She claims she subsequently tried to talk to several people at work to report her injury but was unable to for various reasons. Although she had been a manager previously, she stated she was not aware of the specific methods of reporting a workers' compensation injury. She stated that when she filled out the insurance papers with one of the employer's insurance carriers, she thought it was with the workers' compensation carrier. In this regard, evidence in the file indicated she filed for and received health insurance benefits and disability insurance benefits.

The employer's personnel manager and trainer testified that no one informed her

prior to August 22, 1992, that the appellant's injury or sickness was job related. She stated she helped the appellant fill out paperwork to obtain disability and health insurance prior to the appellant informing her of the job related injury. Although once informed, she immediately reported the injury under workers' compensation procedures, the appellant told her to leave it under disability. The supervisor to whom the appellant claims she told of her back injury on the day it happened testified, contrary to the appellant's testimony, that the appellant had only stated that "she was feeling very ill and that she had very severe pains in her chest and had been ill all night long and had been throwing up because of the pain and that she really didn't feel very good." She specifically denied having any knowledge of the appellant's injury until the personnel manager told her about it in August.

After hearing the witnesses and reviewing the evidence of record, the hearing officer determined that the appellant had failed to give the requisite 30 day notice of injury (Article 8308-5.01, 1989 Act) and did not establish good cause for such failure. Article 8308-5.02(2), 1989 Act. 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). The hearing officer resolves conflicts and inconsistencies in the evidence and may believe all, part or none of the testimony of any witness. Burlesmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ); Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977. writ ref'd n.r.e.). Only if we were to determine, which we do not, that the findings of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would we set aside or otherwise disturb her findings and determinations. Texas Workers' Compensation Commission Appeal No. 92232 (Docket No. redacted) decided July 20, 1992; Texas Workers' Compensation Commission Appeal No. 92252 (Docket No. redacted) decided July 27, 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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Robert W. Potts
Appeals Judge