APPEAL NO. 92414

On July 21, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that the claimant, (claimant), the appellant herein, had not sustained a compensable injury on (date of injury) while employed as a pressman by (employer).

Appellant argues the decision of the hearing officer should be reversed, because he proved, through a preponderance of the evidence, that he sustained a compensable injury. Respondent asks that the decision of the hearing officer be affirmed.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

Briefly, the appellant stated that he had been employed as a pressman by the employer since late January 1992. On (date of injury), appellant stated that he stepped backward off a riser next to a printing press and came down with his right foot on the wheel of a dolly located right behind him. He tripped, traveled backward about five and a half to six feet, hit his spine and the back of his head against the door jam, and fell down. He stated that two coworkers, (JL) and (GB), saw him fall and helped him get up. He continued to work the rest of the week, although his back began stiffening up and getting worse, not better. Appellant stated that, on that Friday, he requested time off to go to the doctor's office on March 3rd (the following Tuesday). He indicated that, subsequent to this, he was terminated.

On March 13, 1992, appellant went to (Dr. S), D.O., who diagnosed him as having an acute lumbosacral strain. Appellant stated that he wore a TENS unit to control pain in his upper back, due to a messed-up disc resulting from a 1979 accident. He began wearing the TENS unit in 1986 or 1987. He stated that, until (date of injury), he "worked out" and lifted weights on a daily basis.

Affidavits from (JL) and (GB) deny seeing appellant fall or helping him up. Both affiants state that the first they knew of any on-the-job injury relating to the appellant was when they heard about it from the employer.

(Ms. F), owner of employer, stated that the first she heard of an alleged injury was from appellant's attorney. She stated that appellant was terminated as a result of a recommendation from (GB), made over a week before the action was taken (and before the alleged injury occurred), because appellant was abusing the equipment by hitting it. (Ms. B), the office manager, indicated that another reason was that appellant had to do a lot of projects over again and could not produce on that machine. Ms. F understood that appellant requested time off on March 3rd to take his girlfriend to the doctor. Ms. B stated that, although her office location would not allow her to see into the production/press area, she would certainly have heard a fall like that described by appellant, because she could

hear nearly everything from that area.

The hearing officer determined that there was a lack of evidence rising to a preponderance that appellant's documented injury occurred at the employer's location in the manner stated. The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. 1989 Act, art. 8308-6.34(e). In reviewing a point of "insufficient evidence," if the record considered as a whole reflects probative evidence supporting the decision of the trier of fact, we will overrule a point of error based upon insufficiency of evidence. Highlands Insurance Co. v. Youngblood, 820 S.W.2d 242 (Tex. App.-Beaumont 1991, writ denied). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The claimant has the burden of proving, through a preponderance of the evidence, that an injury occurred in the course and scope of employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). Generally, medical evidence is not required to prove that an injury occurred, and testimony alone may be sufficient proof. Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989). However, a trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ).

There is sufficient evidence from which the hearing officer could find that an injury did not occur in the course and scope of appellant's employment, and the decision of the hearing officer is affirmed.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge