APPEAL NO. 92415

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 July 9, 1992, (hearing officer) conducted a contested case hearing in (city), Texas, and found that claimant, appellant herein, was not injured on the job and did not give timely notice of an injury. Appellant appeals pro se. Respondent asserts that the appeal was not timely, that appellant did not properly appeal, and that the evidence is sufficient to uphold the decision.

DECISION

We affirm.

The appeal was timely because it was placed in the mail within 15 days of the date it was deemed to be received and it reached the commission within 20 days of the date it was deemed as received. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § § 102.5(h) and 143.3(c).

The Appeals Panel has consistently held that pro se appeals that lack specificity will be treated as attacks on the sufficiency of the evidence. This appeal will be considered in that manner. *See* Texas Workers' Compensation Commission Appeal No. 92081 (Docket No. redacted) decided April 14, 1992.

Appellant worked for a cloth store and stated that on (date of injury), she hurt her back during the seasonal changeover of merchandise. She described it as, "[y]ou know, it wasn't a fall or anything to that nature. It's just it was--I continually worked until we took a lunch break, you know, and then when I took a lunch break, you know, I could feel the pain." She told her supervisor that day that her back hurt and she would see a doctor if it did not improve. She saw Dr. W on January 10, 1992, and indicated to him that her lower back and neck had hurt since (date of injury), when store rearranging took place. She testified that she told her supervisor on January 13th that the work caused the problem, but the supervisor, as reflected in the Benefit Review Conference report, denies that appellant ever indicated she was hurt on the job within 30 days of (date of injury). Appellant also said that she told her new supervisor on February 7th, in a meeting with him and her old supervisor, that she was injured on the job. The new supervisor testified that appellant not only did not tell him she was injured on the job, she said she was not injured on the job. While appellant qualified what she reported on February 7th on rebuttal, her supervisor did not modify his assertion as to what was said in his rebuttal. Three statements from coworkers on the scene on (date of injury) recall, respectively, appellant (1) saying that it was not a good day, but otherwise not complaining, (2) complaining of being tired from the time work started on (date of injury), and (3) telling her supervisor that the work that day had caused her back to hurt.

Appellant began seeing Dr. A in March. She reported the injury to him as work related. Prior to that time, she told her supervisor on February 21st that her problem was caused by the job. Earlier, she had used health insurance to pay Dr. W's bills and she was

on a medical leave of absence drawing disability pay. She said at the hearing that she has pain and cannot work, but she had thought the pain was not serious since she had had pain before because of her old back injury of 17 years ago.

The hearing officer is the sole judge of the credibility and weight of the evidence. Article 8308-6.34(e), 1989 Act. He could believe appellant's supervisor's denial of any report of injury on the day in question. He could believe appellant's subsequent supervisor who said appellant denied that her problem was work related on February 7th. The hearing officer described appellant's explanation of the February 7th discussion with her supervisors as not credible. As an interested party, appellant's testimony could be questioned. While the appellant only had to report an accident within 30 days or show good cause for not doing so, the hearing officer could consider that her actions and/or words within that time period were inconsistent with an accident or injury having taken place on the job. *Compare* this case to Texas Workers' Compensation Commission Appeal No. 92370 (Docket No. redacted) dated September 10, 1992, in which the claimant told her supervisor within one week that she had lost her balance in picking up a stereo and extended her back. In that situation, date, time, and place were reported but claimant did not know whether anything was really wrong except that she had had pain. That case also considered Texas Workers' Compensation Commission Appeal No. 91066 (Docket No. redacted) decided December 4, 1991, which was cited at this hearing.

The evidence was sufficient to support the finding that no injury on the job occurred and that no notice was given to the employer within 30 days of the alleged accident. While appellant's doctor on January 10th thought more testing needed to be done, he did not tell her that the injury was trivial, and her supervisor emphasized that she denied any relationship of injury to work as late as February 7, 1992. As such, the evidence was sufficient for the hearing officer to conclude that appellant had not shown good cause for delay in reporting any alleged injury.

The decision and order are not against the great weight and preponderance of the evidence and are affirmed.

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Joe Sebesta
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge