APPEAL NO. 92434

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 May 27, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. In the subsequent appeal, the decision at hearing was reversed and remanded for additional findings in Texas Workers' Compensation Commission Appeal No. 92258 (Docket No. redacted) decided August 7, 1992. On August 14, 1992, the hearing officer determined that claimant, appellant herein, did not sustain an injury in the course and scope of her employment with the (employer). Appellant asserts that the determination is in error and that the evidence supports a finding that the injury was compensable.

DECISION

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

Although appellant had worked for employer for several years, she had recently transferred to the site where this claim arose. She indicated that she reported for work as a guard at approximately 1:30 p.m. on (date of injury). On her shift a call was sounded to break up a fight at approximately 9:45 p.m. Appellant said that as she turned/twisted quickly to respond to the alert, she noticed a sensation in her leg, like an electrical shock running down it. She did not have to assist in breaking up the fight. Later, as she did paperwork she said she felt pain sharply down the leg. She said she told Sergeant M that day, but he seemed to ignore her in regard to the pain. Appellant introduced her employer's "report of incidents" and identified one dated (date of injury) as referring to the fight in question.

There was a great deal of testimony about whether or not appellant gave timely notice or whether she was thwarted in attempting to give notice. No other employee saw an injury, observed appellant hindered at work, or heard appellant relate that she was injured at work within a week of (date of injury). The hearing officer found that notice was timely and there is no appeal of that finding so evidence directed at this issue will not be discussed.

Appellant has seen several doctors and each describes injury. By letter dated January 9, 1992, Dr. L, a neurosurgeon, states that he believes she has a ruptured disc but mentions the lack of money to do an MRI. Dr. F also believed she had a disc problem in his report of November 18, 1991; he recorded a history that pointed to the turning movement at work as the cause. Dr. H referred to her back pain, but his notes raised a problem for appellant because he recorded on August 21, 1991 that appellant's left hip was hurt when she "picked up a box of wood, turned to rt--L hip didn't turn."

Appellant called Mr. N to testify. He was certain that he came by appellant's home on (date of injury), and she was limping. He saw her limp as she went to the vehicle of Sergeant M, who was picking her up to go to work in the early afternoon. He said that he

had no doubt that it was on (date of injury) because he was off work that day and it could not have been on Saturday. ((date) was a Saturday.) He did say that appellant told him that she hurt herself at work.

The hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34(e), 1989 Act. The hearing officer can believe part of what a witness says and not believe all of it. Bullard v. Universal Underwriters Ins. Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). As trier of fact, he could believe Mr. N when he said that appellant was injured at the time she went to work on the day she says she was injured at work. The hearing officer also resolves conflicts and determines credibility. *See* Perry v. Perry Bros. Inc., 753 S.W.2d 773 (Tex. App.-Dallas 1988, no writ). The note of Dr. H as to appellant's history of picking up a box could raise a question of appellant's credibility. In addition, the testimony of appellant, as an interested witness, does not have to be accepted. *See* Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The findings of fact are sufficiently supported by evidence of record and the decision is not against the great weight and preponderance of the evidence.

The decision and order of the hearing officer is affirmed.

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Joe Sebesta
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Susan M. Kelley
Appeals Judge