APPEAL NO. 92436

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1992). On July 22, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He held that claimant, respondent herein, was injured on the job on (date of injury) and had given timely notice to her supervisor the same day. Appellant asserts that the hearing officer erred in finding an injury in course and scope of employment and that timely notice was given; the appeal also states, "the contested case hearing officer erred in finding that the claimant's current disability is due to an on-the-job injury of (date of injury)".

DECISION

The decision is affirmed.

Respondent worked for (ML) for 20 years. She stated that she had injured her back on the job in 1983 and several times since then. She previously filed health insurance claims because that was what she was told to do. While most of her time was spent with paperwork, she did have to move supplies; many weighed approximately 10 pounds with some a little heavier, but most weighed much less. On (date of injury), in preparation for inventory, she moved spools of wire weighing approximately 10 pounds each. Her supervisor estimated the number at 60 or 70 spools, and respondent testified that it was more than 100. Respondent testified that as she was lifting the spools, her lower back went into spasms. She stated that the symptoms of her injury were different in 1991 from previous ones although she did have spasms, she thought, in 1986. She told her supervisor that same day at lunch time, "I hurt my back lifting that wire." She testified that her supervisor's response was, "[w]ell, [respondent], what can I say?" and that was it.

When supervisor testified, he acknowledged a "casual conversation" in which respondent told him that her back was hurting "and she attributed it to the moving of the spools of wire." This conversation occurred on (date of injury), but he remembered it at a different time of the day. The safety director also testified but agreed that in most instances, he would not hear of an accident unless the supervisor made a report; none was made in this instance. The Monday following the Wednesday that the injury occurred, respondent saw her doctor. That date was October 28, 1991, and Dr. D noted, "[i]njury to low back (date) on job lifting spools of wire." This note appears in the left margin of progress notes but its appearance was not questioned on appeal and the weight to be given it was for the hearing officer to decide. Respondent then began physical therapy that was recorded on October 29th and 30th; November 4th, 6th, 8th, 11th, 13th, 15th, 18th, 20th, 22nd, 26th, and 29th; and December 2nd, 4th, and 6th. At several of these therapy sessions, respondent's muscle spasms were noted. On May 15, 1992, Dr. D wrote to the social security bureau that respondent was "injured on the job in 1983, and (month year)." Other physicians who saw respondent said about her back, "very mild, chronic, C5 radiculopathy" (Dr G in interpreting a nerve conduction study in April 1992), and "[d]iagnostic impression is chronic neck, upper and lower back pain, primarily myofascial by physical examination" (Dr W in

February 1992).

Since November 5, 1991, respondent has not gone back to work. She is not working now and states that she cannot work. When asked which doctor is primarily treating her now, respondent stated that she has been told she needs surgery and she wants to see about that possibility. She has been at the plant longer than any other woman and wanted to "be a part of the Quarter-Century Club." Her supervisor stated that she is a credible person.

The hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34 (e) 1989 Act. He could believe the respondent when she said she told her supervisor the same day of the injury. He could believe that notification took place even though the supervisor recalled it as part of a casual conversation. Respondent's testimony of the sequence of events in performing her duties, the occurrence of spasms in the back, prompt notification to her supervisor, and treatment the following Monday can be considered to produce a logical, traceable connection between the accident and the result. *See* Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied). The hearing officer, as trier of fact, can give more weight to the medical evidence of one physician as opposed to that of another and could believe Dr. D's references to respondent's injuring herself in 1991. Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex Civ App-San Antonio 1950, writ ref'd n.r.e.).

The appellant also states that the hearing officer erred in finding that disability is due to the (year) injury. We note that there was no issue at the hearing as to disability. Appellant asserted at the hearing that respondent had a degenerative disc disease and that a chronic problem, not a specific injury, was the basis for her condition. The hearing officer's only finding that even used the word "disability," was Finding of Fact No. 5 which reads:

5.There are no doctor's reports that attribute the Claimant's current disability, solely, to a pre-existing or subsequent injury or disease.

The appeals panel has previously said that the carrier had the burden to establish that injuries incurred prior, or subsequent, to the injury in question are the sole cause of the present disability. *See* Texas Workers' Compensation Commission Appeal No. 92018 (Docket No redacted) decided March 5, 1992. The record contained sufficient evidence on which the hearing officer could base his findings that an injury occurred on (date of injury) and that respondent timely notified her supervisor. His finding that the appellant had not established a prior incident or condition as the sole cause of respondent's condition is also sufficiently supported by the evidence.

The decision and order are affirmed.

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Susan M. Kelley
Appeals Judge