APPEAL NO. 92438

A contested case hearing was conducted on June 19 and July 17, 1992, (hearing officer), presiding, to consider the sole disputed issue, to wit: was appellant (claimant below) injured in the course and scope of her employment with (employer) on or about (date of injury). Finding that appellant did not injure her back while working for employer on (date of injury), the hearing officer concluded appellant was not injured in the course and scope of her employment. Appellant challenges the sufficiency of the evidence to support that determination while respondent urges our affirmance.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, the decision is affirmed.

The hearing officer's Decision and Order contains a detailed statement of the evidence which neither party assails and which we adopt and incorporate. This case turned on the credibility of appellant. The parties, both at the hearing and on appeal, focused on the inconsistencies in the evidence. In brief, appellant commenced work in October 1991 assembling radar poles for (employer) after having been off work for nearly three years. She testified that early on the morning of (date of injury), while in the restroom at work, she slipped on water on the floor and fell on her back, striking her head and knocking herself "looney" (but not unconscious) for about two minutes. She developed an immediate headache and felt low back pain. When she exited the restroom, her back and bottom were wet and she had dirt on her pants and shirt. She told her supervisor, (PG), that he needed to get someone to clean up the water and that she had slipped. However, she did not tell him she had fallen, nor did she mention the headache and low back pain. At one point she said she didn't have time to tell him she had fallen because he immediately turned his back to get the water problem taken care of, and at another point said she didn't know why she failed to tell him of her fall. She also offered the explanation that she hoped the pain would dissipate and that she didn't want to be involved in another workers' compensation claim. In 1989, she settled a claim for a work-related back injury sustained while working for another employer. That injury resulted in a spinal fusion at L5-S1 for which her medical benefits were still open.

Several hours later, appellant left work to keep a previously scheduled appointment with her family doctor, (Dr. M), for treatment of her flu symptoms. She explained her failure to mention her fall to (Dr. M), variously, as not being sore, and as not wanting to be back on workers' compensation and hoping her symptoms would resolve. However, later that evening, when she developed a bad headache and her neck and right arm hurt, she called (Dr. M) who referred her to (Dr. H), the orthopedic surgeon who had been treating her prior back injury. (Dr. H) corroborated this call and saw her the next day. Appellant also called (Dr. G) the next day to advise him that she had been taken off work until her next doctor's appointment the following week for her flu condition, and that she had fallen the previous day.

(Dr. G) testified that when appellant told him about the water on the floor, she said "I slipped and almost fell," but indicated she was all right. She appeared normal and not upset. She turned her back to walk away and he didn't notice wet clothing despite the substantial amount of water he saw on the floor. He said appellant would have been soaking wet had she lain in that much water. He also said that when appellant reminded him of her doctor's appointment that morning, she rubbed her neck and shoulder and said she didn't know if it (apparent discomfort) was related to the flu. He corroborated appellant's telephone call the next day in which she advised she would be off work until her next appointment for her "pneumonia", and also that she had fallen and had hurt her back and neck.

Both appellant and (Dr. G) were questioned about inconsistencies between the statements they gave a representative of respondent on January 31, 1992, and their hearing testimony. Also, appellant insisted she saw (Dr. M) on the morning of her injury and called him that night, notwithstanding that his records reflected her last visit was on April 23, 1991. (Dr. H)'s records reflected that on (date), she gave a history of falling at work on (date of injury) and complained of mid and upper back pain radiating into her neck and right arm. His record of February 6, 1992, which stated that appellant had nerve damage in her cervical spine, referenced a test of January 29th indicating right C6 radiculopathy. However, a total myelogram and a post-myelogram CT scan, done for (Dr. H) on May 19, 1992, indicated normal cervical and thoracic findings, as well as appellant's prior low back fusion at L5-S1. Respondent argued that appellant's complaints related to her prior back injury and surgery, while appellant insisted she suffered new injuries on (date of injury).

With the evidence in this posture, the hearing officer found that appellant did not injure her back while working for employer on (date of injury), and concluded she was not injured in the course and scope of her employment on that date. Article 8308-6.34(e) vests in the hearing officer the sole responsibility for judging the weight and credibility of the evidence. As the trier of fact, it was for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of any one witness, including appellant, and may give credence to testimony even where there are some discrepancies. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). We will not substitute our judgement for that of the hearing officer where, as here, the findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ). The challenged findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision of the hearing officer is affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Susan M. Kelley
Appeals Judge