APPEAL NO. 92455

A contested case hearing was held in (city), Texas, on July 29, 1992, (hearing officer) presiding as hearing officer. He determined the appellant did not sustain an injury in the course and scope of her employment and that she did not give timely notice of her claimed injury. Accordingly, he denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Appellant urges that the decision of the hearing officer is against the overwhelming weight and preponderance of the evidence and that "good cause exists for the waiver of the 30 day notice requirement." Respondent's reply brief cogently refutes the asserted points of error.

DECISION

Finding probative evidence to support the determinations of the hearing officer and that his decision is not against the great or "overwhelming" weight and preponderance of the evidence, we affirm.

This case was vigorously contested and the ultimate decision hinged on the assessment of weight and credibility to be given the testimony and documentary evidence. Article 8308-6.34(e) of the 1989 act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. As we have held in previous cases, unless the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, it is not appropriate to set aside or reverse the decision. Texas Workers' Compensation Commission Appeal No. 92232 (Docket No. redacted) decided July 20, 1992; Texas Workers' Compensation Commission Appeal No. 92046 (Docket No. redacted) decided March 23, 1992.

Briefly, the appellant testified that she slipped on a cardboard box at her place of employment on (date of injury) and fell, injuring her back. She did not mention this to anyone or make any report, and continued working. (She continues to be employed by the employer). She stated that the next day, while they were joking around, she mentioned to her supervisor, who was also a friend, that she "had slipped and fell and that my bottom was still sore that morning." (The supervisor gave a different version of this conversation and related the matter to an incident in a freezer sometime earlier). The appellant stated that she did not feel any great pain at the time. She went to the doctor on January 3, 1992, but apparently for other reasons relating to a cold, fever, and sore throat. She states she told the doctor about her back pain and the fall at work. A handwritten note in the medical records indicates "also pain lower R side of back for 2 wks."

She testified that her back got progressively worse and she went to doctors in March, April, May and June and was diagnosed to have a herniated disc at the L5-S1 level. Her testimony and medical reports in evidence show a somewhat lengthy history of and treatment for back pain which resulted from an incident involving an earlier fall in a freezer and another injury from a ride at an amusement park. Other testimony included that of the

appellant's husband who stated she told him of the fall when he picked her up on the (date of injury), that her back pain got progressively worse and that sometime around March, after his wife suffered severe pain at home and could not get up from a seated position, he told the employer's manager that his wife had been injured on the job. The manager testified that the first he knew of the claimed on-the-job injury was when the appellant's husband called him sometime in March.

With the evidence in this posture, the hearing officer found that the appellant did not sustain an injury while working for the employer and did not timely report any injury. While there is some conflict in the evidence and a degree of inconsistency, it is the fact finder's responsibility and duty to resolve such matters and make pertinent findings of fact. Article 8308-6.34(g); Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 314 (Tex. Civ. App.-Amarillo 1974, no writ). Where, as here, there is probative evidence to support his determinations, and they are not against the great weight and preponderance of the evidence, we appropriately affirm. *See* Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex.1986); Texas Workers' Compensation Commission Appeal No. 92058 (Docket No. redacted) decided March 26, 1992.

The decision is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge