APPEAL NO. 92458

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. articles 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). A contested case hearing was held on July 31, 1992, at (city), Texas. (hearing officer) presided as hearing officer. The sole issue at the hearing was whether the claimant (appellant herein) sustained a compensable injury in the course and scope of her employment. The hearing officer held that appellant was not injured on (date of injury), while in the course and scope of her employment and is thus not entitled to receive workers' compensation benefits.

In her request for review, appellant contends that the hearing officer's decision is against the great weight and preponderance of the evidence. No response was filed.

DECISION

We affirm the decision and order of the hearing officer.

Appellant, who spoke little English and testified through a translator, said she had been employed by (employer) in their bakery department since 1989; however, as of the date of the alleged injury, (date of injury), she had been reassigned to the salad department. She testified that on that date she needed to leave work early because of car problems, and had cleared it with (Mr. R), who was the food services director, when she was clocking in. When she went to tell her immediate supervisor, (Mr. M) that she needed to leave, he did not answer. She said Mr. R arrived and said he wanted to talk with her in his office, but Mr. M told her that they needed more fruit. She said she went to the refrigerator, two or three feet from where Mr. M was putting cabbages into carts. She said she heard Mr. M yelling, but that she didn't know whether or not he was yelling at her. She said she was leaning to the side to give him room to pass when he accidentally touched her on the left arm, causing her to slip and fall to the floor. She said she lost consciousness and did not regain it until she was at the hospital. She said she had pain in her head and shoulder, her back, and down the right side of her neck and arm. After she was released from the hospital, she said she saw two other doctors. She testified that she still has pain from her head extending down to her back.

Mr. M, who is the production manager for employer, testified that about 5 p.m. on (date of injury) he went to appellant's location to help her make cole slaw. He said she pointed her finger at him and told him he had discriminated against her. He said the area where they were was a "very visible" area, and that he was not aware that she fell or had been injured. He later went into his office where he found appellant crying. Because he did not speak Spanish, he got Mr. R to talk to her, then went back to work. He said he had raised his voice to appellant because it was loud in the kitchen area, but said there had been no arguing. He denied that he was upset about appellant leaving early, saying he did not know about it.

Mr. R testified that when he went to Mr. M's office appellant told him she couldn't

breathe and that she felt like dying. He said she never said she had fallen. She told him both he and Mr. M had discriminated against her because they had reassigned her to a job she did not want to do.

Appellant said she had told Mr. R he was discriminating against her when he changed her schedule, but she said that did not occur on (date of injury). She stated she was happy working in the salad area because she felt it would give her new skills, and said she had never accused Mr. M of discrimination. However, she told the hearing officer that Mr. M got mad at her before the accident occurred, telling her to leave and not to come back. A sworn statement of Jose Valeriano, a coworker, stated that on (date of injury) he heard Mr. M yelling at appellant to "go home right now," and "punch your time card and never come back." He said that later in the day he was told by another employee that appellant was lying on the floor crying and there was an ambulance to take her to the hospital. Mr. M denied that he reprimanded appellant on that date.

An emergency room report dated (date of injury) states that appellant told the attending physician, through her son, that she developed a headache and a feeling like she was "going to die" following a reprimand by her supervisor. She also complained of difficulty in remembering things and in formulating thoughts, and said she had pain in the posterior portion of her head. A CT scan of the head was performed and found to be within normal limits. The physician found the etiology of appellant's symptoms confusing, with a "large component of anxiety involved." He referred her to (Dr. K) for further examination. Dr. K performed a lumbar puncture, but assessed hysterical reaction with headache and memory loss due to being reprimanded at work. A March 11 medical report by (Dr. L-R) diagnosed lumbo-sacral sprain/strain, thoracic vertebrogenic radiculitis, cervical strain/sprain and cervical segmental somatic dysfunction. An attached report by (Dr. L) gave the patient history as "Patient was injured while at work she was pushed and fell." Dr. L-R issued appellant a work excuse from March 6 to April 13 while she was being treated at Jefferson Chiropractic Clinic.

The claimant in a workers' compensation case has the burden of proof to establish by a preponderance of the evidence that an injury occurred in the course and scope of employment. Parker v. Employers Mutual Liability Insurance Company of Wisconsin, 440 SW2d 43 (Tex. 1969). Where, as here, there is much conflicting testimony, it is the hearing officer's responsibility to resolve such conflicts, and she could believe one witness and disbelieve others. Ford v. Panhandle & Santa Fe Ry. Co, 252 SW2d 561 (Tex. 1952). The hearing officer is the sole judge of the relevance and materiality of the evidence and its weight and credibility. Article 8308-6.34(e). We will set aside the hearing officer's decision only where the evidence supporting it is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 SW2d 182 (Tex. App.-San Antonio, writ ref'd n.r.e.).

In the case before us, a review of the record convinces us that there is sufficient evidence to support the hearing officer's determination that appellant did not suffer an injury

in the course and scope of her employment on (date of injury). We therefore affirm the decision and order of the hearing officer.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Philip F. O'Neill
Appeals Judge