

## APPEAL NO. 92470

A contested case hearing was held on July 20, 1992, in (city), Texas, (hearing officer) presiding as hearing officer. She determined the appellant did not sustain a compensable injury while in the course and scope of employment on (date of injury), and was not entitled to 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 error on the part of the hearing officer and asserts that the evidence clearly establishes that he sustained a compensable injury. Respondent urges there is substantial evidence to support the hearing officer's determination and asks that the decision be affirmed.

### DECISION

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

The Statement of Evidence in the hearing officer's Decision and Order fairly and accurately sets forth the pertinent evidence in this case. We adopt and incorporate it in this decision. Briefly, the appellant testified he was a bus operator and on the morning of (date of injury), he was sitting in his stalled bus when it was hit from the rear. He claims he suffered a back injury for which he went to the doctor three days later. He was treated for lumbosacral pain and apparently was released to light duty status on (date) and to full duty on April 6th, although the appellant actually went to work on April 4th. Statements in evidence from the appellant's supervisor indicate the appellant stated shortly after the incident that he was not on the bus at the time of impact and that he was not injured. Statements from the occupants of the car which rear-ended the bus, indicate the appellant was not on the bus at the time of the incident. The supervisor and the occupants of the car indicated there was no damage to the bus and company records show no repairs were made to the bus. A friend of the people in the colliding car, who also was a bus driver, called the claimant on their behalf to inquire about any damages. The witness stated the claimant told him there was no damage to the bus and that he had no injuries.

Based upon this evidence, the hearing officer was not convinced that the appellant sustained a compensable injury and found that he was not injured on (date of injury). 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. Article 8308-6.34(e). To be certain, there was conflict in the rendition of the incident between the witnesses, and some inconsistencies in the various versions of the events. As the fact finder, the hearing officer must sift through the evidence and resolve conflicts and inconsistencies (Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and in doing so may believe one witness over another and may believe all, part or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). Our review of the record does not disclose any reversible error on the hearing officer's part and we find the evidence sufficient to support her decision.

The decision is affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge