APPEAL NO. 92480

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 August 5, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that claimant, appellant herein, was not injured on the job. Appellant asserts that the decision and certain findings of fact and conclusions of law are against the great weight and preponderance of the evidence.

DECISION

Finding that the evidence sufficiently supports the decision, we affirm.

Appellant had been on vacation when she returned to work as a maid at a local branch of a motel chain. She reports that the next day after returning to work, she injured her back moving a combination chest of drawers, television stand, and desk that was out of line in a room she cleaned. She was due to return from vacation on June 11th; she returned on (date); she states that she was injured on (date of injury); she went to a hospital emergency room on June 17, 1991.

The emergency room note indicates that appellant reported injuring herself at work on (date of injury) while moving heavy furniture. Her x-rays, also done on June 17th, showed no acute findings, but did show some narrowing of disc spaces, some spurring, and some degenerative sclerosis consistent with arthritis. The emergency room doctor's assessment was low back strain and sprain. When appellant went to Dr. D, an orthopedic surgeon, on June 21, 1991, her history was recorded as low back discomfort after vacuum cleaning. When appellant next saw Dr. D, on January 7, 1992, he notes, "again relates history of injury on approximately (date of injury). . . . She is unclear exactly how she may have injured it. Initially she related to me that she thought it was vacuuming, but today she says it may not have been the vacuuming, but may have been moving heavy triplex (entertainment center)." An MRI was ordered. The MRI then showed that appellant has "degenerative disc disease at L4-5 and S-1 and some bulging of the disc . . ." Dr. D opined that she probably could return to medium work but not to heavy labor.

The manager of the local branch of the motel testified that before the alleged injury, when appellant returned from vacation and was signing in, she stated that her back was sore and hurting in reply to his question that simply asked how she was doing. While the claim states that appellant injured herself the next day ((date of injury)) the manager first heard of the possibility of any on the job injury on June 17, 1991, when appellant's husband came to the motel asking for a copy of the "accident report." Appellant had worked on June 14th and June 15th. June 16th was a Sunday and she was not scheduled to work. She never returned to work after June 15th. Appellant's husband testified also but provided no relevant information. No statements of other employees were offered by either side. Appellant described her injury as occurring when she moved the desk end (as opposed to the television/large drawer end) of the combination piece approximately six inches back so

it was next to the wall. She said, "I pushed it back in place." She said that she felt a sharp pain as if she had been stuck with something at the moment she moved it. She did not tell anyone that day of an injury and denied that she told the manager when first returning to work from vacation that her back hurt.

The hearing officer is the sole judge of the weight and credibility of evidence. Article 8308-6.34 (e). He could question the credibility of appellant when she said that she felt a sharp pain when moving the combination piece but within eight days of the accident had given a history to Dr. D that related it to vacuum cleaning. Later Dr. D said that she was unclear as to how it happened. On the other hand she apparently told the emergency room about moving the combination piece because that doctor noted "moving heavy furniture." Similarly, the hearing officer could believe the manager who said that appellant complained that her back hurt when she returned to work the prior day. While a back that hurt on a preceding day does not show that it was not injured in a different way or aggravated on the day in question, appellant's denial that she made the statement could be considered. Appellant also stated that she did not go back to see a doctor between June 21, 1991 and January 7, 1992 because of financial considerations, even though her back still hurt and she could not work.

Appellant objects to Finding of Fact No. 5 that says she was sore and hurting prior to returning to the job on (date). Two points are made: first, the finding was contrary to what appellant said, and, second, that it is irrelevant. First, the testimony of the claimant, as an interested party, can be viewed as only setting forth fact issues for resolution. *See* Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The appellant's testimony that she made no statement about her back being hurt may be compared in judging credibility to that of the manager who said she made such a complaint. Finding of Fact No. 5 may be irrelevant, in part, since an injury may be aggravated or a new injury may occur. However, in this instance Finding of Fact No. 5, whether formalized as a finding or not, is relevant when the claimant has provided different histories in medical records of how the injury occurred and on what date. Her statement of (date) could be considered as another possibility as to the injury in question. There is sufficient evidence of record to support Finding of Fact 5.

Next, appellant asserts that Finding of Fact No. 6 was in error in saying that appellant's medical records showed that she was not sure how the accident occurred. As discussed previously, the medical records contain two different statements concerning her history as given to Dr. D and another account, albeit consistent with what appellant states at the hearing, by the emergency room doctor. The hearing officer was free to find from these entries that the medical records indicated appellant was not sure how an injury happened.

Finally, the appellant says that there is no evidence of any other injury, and Finding of Fact No. 7 that appellant did not sustain an injury on the job is in error. There is no requirement that an injury, other than the one alleged, must be shown. The hearing officer

could believe that the appellant has a sprained and strained low back but not believe it was shown to have occurred on the job. *See* Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The trier of fact's decision will not be set aside just because inferences were drawn from the evidence that may not be the most reasonable ones. *See* Garza v. Commercial Ins. Co. of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The appeals panel will not reverse a factual determination unless it is against the great weight and preponderance of the evidence, which is not the situation in this case.

Appellant also objects to certain conclusions of law. The conclusions of law either follow the findings of fact and are sufficiently supported by the evidence or else apply to questions of disability which are moot since the injury was not found to be within the course and scope of employment.

The decision and order are based on sufficient evidence of record and are affirmed.

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Lynda H. Nesenholtz
Appeals Judge