APPEAL NO. 92489

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 June 9, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He held that claimant, respondent herein, injured her back in the course and scope of employment and was entitled to benefits. Appellant asserts that there is insufficient evidence to support that conclusion, indicating that the injury of (date of injury), only hurt her knee. On September 1, 1992, the case was remanded by the Texas Workers' Compensation Commission Appeals Panel to provide a complete record. No hearing below was necessary and a complete record is available for review.

DECISION

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

Respondent worked as a waitress for her employer, (employer), since October 1990. She had worked primarily as a waitress all her life, but approximately 20 years ago, while working in a department store, had fallen from a ladder, injuring her back. At that time her physician suspected a disc problem in her back and she underwent a myelogram. She had a severe reaction to the myelogram, though, and never determined the extent of the injury. She said that over the years her back would occasionally be painful, but most waitresses' backs were. Prior to the injury in question her prior back condition never caused her to miss work.

She was injured on (date of injury), when she was backing through swinging doors carrying hot food. One foot slipped on a wet spot near the door and she fell to one knee. In trying to balance the food to keep from spilling it, her other foot "split" out at an angle. At first she thought that the fall had only bruised her knee. There is no dispute that respondent fell at work on (date of injury).

Two statements were introduced by appellant that indicate that respondent kept working for several months after the fall. One by S. W., manager of the cafe where respondent worked, said that respondent left work one day in October with a gynecological problem. This statement also noted that respondent said in November that she had to file a workers' compensation claim because her health insurance ran out. It points out that since (date of injury), respondent has moved three times and flown to (city) and never complained about her back. A sworn statement by a coworker, V. E., said that respondent only complained about gynecological problems, but also talked of both moving her mother and her family since the fall. She said she told respondent that she should not be moving furniture.

Respondent, as stated in the hearing officer's "Discussion of the Evidence," did not see a doctor for the knee injury. Her leg did begin to hurt after a period of time and she tried to get different shoes to address the pain. Her groin also became painful. She went

to a gynecologist in October, who found no problem. Referred to an orthopedist, he at first thought a hernia was possible so he sent her to a surgeon. The surgeon ruled out a hernia and the orthopedist took another look. On December 11, 1991, Dr. M, the orthopedist, said in his note, "(i)t is important to note that this patient had a previous history of a lumbar herniated nucleus pulposus. Prior to her injury, however, she was not symptomatic from this disc herniation. Because of this, her injury represents an aggravation of an L4 herniated disc which now seems to be progressively worsening." Thereafter, a discogram showed the L4 disc to be herniated and Dr. M said that respondent should "seriously consider" surgery.

The hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34(e), 1989 Act. His finding that the employer had actual knowledge of the accident was not appealed. While appellant asserts error in several findings of fact, it generally calls attention to the fact that some evidence by respondent was not corroborated. Issues of injury and disability may be established by testimony of the claimant alone. *See* Houston Gen. Ins. Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). While cases that discuss such proof by a claimant, alone, usually refer to a clear sequence of events, the sequence of events here is augmented by the evidence of Dr. M, who says it is medically possible to have such an aggravation. In addition, appellant's evidence indicates that others were told of developing problems but those problems may have been misdiagnosed by respondent in describing them. Such lay diagnosis does not appear unreasonable when it thereafter took three different doctors to resolve what the problem was, based on the same symptoms. While statements in evidence from appellant and respondent may appear to contradict each other, they may not do so in regard to complaints she made as a result of the (date of injury) fall. Respondent also denied that she helped move any heavy furniture and denied that her mother has made any move during the period in question.

Appellant takes issue with Finding of Fact Nos. 5, 7, 8, 9 and 11. Finding of Fact No. 5 only relates to respondent's original belief that the accident only hurt her knee. Appellant states this finding is not supported because neither S.W nor K. A. were aware of a problem except the knee. That statement appears to support the finding, not contradict it. Finding of Fact No. 7 states that respondent later began to have pain in her leg and groin. This is supported sufficiently by the statement of respondent, her attempt to find better shoes, and her visit to a gynecologist. Finding of Fact No. 8 merely says that it was reasonable for respondent to associate groin and leg problems as being gynecological in nature. The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 91097 (Docket No. redacted) decided January 16, 1992, has affirmed a decision that a back problem in a sewing machine operator was initially thought to be gynecological in nature. The evidence sufficiently supports Finding of Fact No. 8. Finding of Fact No. 9, in saying that the employer was aware of increasing leg and groin pain in respondent, is supported by the respondent's testimony and the statement of S. W. which agrees that respondent complained of gynecological problems. Finding of Fact No. 11 states that respondent's belief that her problems were gynecological was bona fide reasonable and provided a basis for

delay in notice of the back injury. We note that the hearing officer has found, and it is not appealed, that the employer had actual notice of the (date of injury) fall causing injury. Article 8308-5.01, 1989 Act, requires that the employer be notified "of an injury not later than the 30th day." Article 8308-5.02(1) allows actual notice, which was herein found. Article 8308-5.01(b) then provides that a claimant has up to one year to file a claim. While this finding of fact may not be needed, it is sufficiently supported by the testimony of respondent and the medical diagnosis of Dr. M. *Also see* Appeal No 91097, *supra*.

Judging weight, credibility, and resolving conflicts are responsibilities of the trier of fact, who, under the 1989 Act, is the hearing officer. *See* Ashcraft v. United Supermarkets Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). "If the verdict is supported by sufficient evidence, we may not substitute our judgment for that of the jury, even if we would have found otherwise if we had been the trier of fact." Maryland Cas. Co. v. Duke, 825 S.W.2d 232 (Tex. App.-Texarkana 1992, n.w.h.). By referring to this standard concerning sufficiency of the evidence, we do not indicate that in the case before us we would have found other than did the hearing officer.

The decision and order are affirmed.

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Joe Sebesta
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge