APPEAL NO. 92543

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 September 2, 1992, a contested case hearing was held in (city), Texas, with (hearing office) presiding. He found that appellant, claimant herein, was not injured on May 1, 1991, at work and did not report any injury within 30 days thereafter. Claimant asserts that the evidence supports a determination that he was injured and did report the injury; he also questions whether a conclusion of law is sufficiently written.

DECISION

Finding that the decision of the hearing officer is sufficiently supported by the evidence, we affirm.

Claimant worked as an insulator for (employer) which had a number of its employees working at a plastics plant on May 1, 1991. Claimant had worked for employer approximately seven years off and on, with his last period starting about three years prior to the date of the claim. Claimant testified that he hurt his back when he slipped as he picked up a bucket of mastic, used in insulating, that weighed 60 pounds. He also stated that later in the day he told a plant employee, JW, who supervised the daily details of his work, that he hurt his back. Claimant said that TA, also employed by employer, was working with him at the time and he thought that TA saw the fall. TA said he was working in the same vicinity that day and saw claimant lift a bucket as he described. He said claimant later told him he had hurt himself, but he did not see an accident. TA saw JW when he picked up claimant and himself at the end of the day but did not hear claimant tell JW that he had been injured.

JW, who worked for the plant but supervised claimant, said he did not recall hearing anything about an injury to claimant. He described his own medical problems and said he would not have ignored or forgotten a report of injury such as claimant testified he made. JW has been informed of injuries before and made a report on them. If the injury were to an employee of employer, he said he would also pass on the report to a supervisor for employer. In addition, the carrier called the personnel manager for employer and the on site supervisor for employer (TT) to testify; both had heard nothing of an injury until a claim was filed about 11 months later in April 1992. TT also stated that records of activities for May 1, 1991 show that claimant worked alone removing insulation, which does not require the use of mastic as does applying insulation. These records were also said to show that on May 1st TA was working on a boiler in the same general area, but not close to claimant.

Claimant said that he saw a doctor in (city) on May 5, 1991 after he and several other employees were laid off on May 3, 1991. He said he next saw a doctor in the summer of 1992 at a medical center (location not identified) who told him to see a specialist, which he could not do since the claim was not being paid. He also filed for unemployment benefits the day he was laid off and collected them until just before he filed the workers' compensation claim. He has not worked anywhere for any period since May 3, 1991.

Claimant provided no medical documents and did not describe in detail how his back felt when injured, how he was able to work the next day, how he treated the problem between doctor's visits, or what caused him to conclude that he could not work after the passing of the acute stage of the alleged injury.

The hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34 (e) of the 1989 Act. He could believe that JW would not dismiss or forget to report being notified of an injury--if claimant had told him as claimant said he did. *See* Bullard v. Universal Underwriters Ins. Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Since claimant is an interested witness, the hearing officer did not have to accept his testimony as to the injury. *See* Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). Claimant's assertions that he worked with TA on the day of the incident could raise a question of credibility in view of TT's testimony that the records of employer showed that claimant worked alone on that day. *See* Sifuentes v. TEIA, 754 S.W.2d 784 (Tex. App.-Dallas 1988, no writ). As trier of fact, the hearing officer could give little weight to claimant's statement that he could not work for a year when he provided no medical evidence and no detail as to his limitations, but chose to collect unemployment compensation during the bulk of the period. *See* Ashcraft v. United Supermarkets Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). The findings of fact that claimant did not injure his back and did not report the incident to either supervisor are sufficiently supported by the evidence of record.

Claimant also objects that Conclusion of Law No. 2 is in error in stating that claimant failed to meet his burden of proof because "Article 6252-13a VACS does not assign a burden of proof to either party" and because it is too broad. Benefit contested case hearings are not controlled by the dispute resolution provisions of the Administrative Procedure and Texas Register Act, TEX. REV. CIV. STAT. ANN. art. 6252-13a (Vernon Supp. 1991), except as to subpoenas. *See* Article 8308-6.32 of the 1989 Act and Tex. W. C. Comm'n, 28 TEX ADMIN CODE §142.1 (Rule 142.1). The burden in a workers' compensation case is on the claimant to prove that he was injured. *See* Texas & Pac. Railway Co. v. Van Zandt, 159 Tex. 178, 317 S.W.2d 528 (1958). Although that case was decided under prior law, the 1989 Act did not attempt to change this interpretation of the law and we will therefore consider this case and similar ones as persuasive in regard to the 1989 Act. Article 8308-6.34(g) of the 1989 Act, which provides for findings of fact and conclusions of law, does not set forth standards of specificity in regard to either. The conclusion in question is adequate and is sufficiently supported by the findings of fact and evidence of record.

We affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge