APPEAL NO. 92550

A contested case hearing was held in (city), Texas, on August 26, 1992, (hearing officer) presiding as hearing officer. He determined that the appellant (hereinafter called claimant) did not sustain an injury in the course and scope of his 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). Claimant disagrees with the hearing officer's determination and urges that he did suffer an injury as a result of a slip and fall at work on (date of injury), and that the contested case hearing was not fair because "they" lied about everything that really happened. He asks that the decision be reversed and that he be awarded benefits. Respondent (hereinafter called carrier) contends there is sufficient evidence to uphold the hearing officer and asks that the decision be affirmed.

DECISION

Finding that there is sufficient evidence to support the hearing officer's decision, we affirm.

The critical matter in this case centered around credibility. In his discussion section, the hearing officer indicated that he did not find the claimant's testimony credible in some respects. In this regard, Article 8308-6.34(e) of the 1989 Act provides that 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. We have repeatedly held, in accordance with the clear guidance of Texas case authority, that if there is sufficient evidence to support the determination of the hearing officer, as the fact finder, and his determination is not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust, we do not have a basis to disturb his decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992; Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992; Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991.

The evidence is set out in detail in the hearing officer's Decision and Order and we find it to be a fair and accurate statement of the case. Accordingly, we adopt it for purposes of this decision. Briefly, the claimant testified that he slipped and fell at work while carrying dirty dishes and utensils. His supervisor came up to him shortly thereafter while he was still sitting on the floor. He claims he felt dizzy and that he had pain in his shoulder. He states he worked only 15 minutes more and asked to go home and was allowed to do so. He testified that he started having more pain that night but did not seek any medical attention, that he did not go to work nor did he call in during the next two days (a Saturday and Sunday) and that when he went to work on Monday, he told the manager he needed to see a doctor. He states he got into a verbal altercation with the manager and left to go see an attorney who, in turn, referred him to a doctor. There is medical evidence in the record but no results of any objective test or examinations that were supposedly performed on the claimant. The doctor he saw indicated his impression of "Cervical spine syndrome. Thoracolumbosacral spine syndrome" and recommended a physical therapy program and

prescribed some medication. The claimant indicated that he had three prior workers' compensation claims but denied that he had as many as six.

Witnesses for the carrier provided testimony which indicated the claimant had just come back to work part time from an unrelated shoulder problem which kept him from working for a month to a month and a half. They established that another person had been hired to replace the claimant and that he was only working one day a week--Fridays. The supervisor on duty on (date of injury), stated he did not see the claimant fall and that, pursuant to his inquiries, no other employee had either. He stated he saw the claimant sitting on the floor and asked him several times if he was okay to which the claimant responded that he was. He states the claimant never said anything about being dizzy or having any pain. The supervisor testified that the claimant worked for several more hours and that he was released because business was quiet and there was no work for the claimant to do. He stated the claimant was not scheduled to work either the following Saturday or Sunday. The manager on duty Monday indicated the claimant came in and got his check and stated he needed to see doctor because of his fall. The manager stated he told the claimant that he did not believe he injured himself and that he asked the claimant if he was attempting to claim an injury similar to a claim made recently by a friend of the claimant's who had been hired at the same time as the claimant. The claimant denied this. He testified that he and the claimant then exchanged some heated words and that the claimant left.

The hearing officer states in his decision that the claimant failed to establish that he sustained an injury in the course and scope of his employment on (date of injury). While it is recognized that different inferences might possibly be drawn from the evidence, it is clear that the hearing officer carefully weighed the evidence before him and assessed the credibility he deemed warranted under the circumstances. We find no basis to disturb his decision. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ-App.-Amarillo 1974, no writ). Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge