APPEAL NO. 92558

A contested case hearing was held on September 15, 1992, in (city), Texas, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) sustained a minor burn injury in the course and scope of her employment but that she did not suffer a back injury in connection with the minor burn injury. She ordered the payment of benefits only for the burn injury in accordance with the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Claimant appeals the hearing officer's determination that she did not suffer a back injury in the course and scope of her employment and asks that we reverse the decision. Respondent (carrier) argues that the evidence is sufficient to support the hearing officer's decision and asks that the decision be affirmed.

DECISION

Finding the evidence of record sufficient to support the determinations of the hearing officer, the decision is affirmed.

The hearing officer's Decision and Order fairly and accurately sets forth the pertinent evidence in this case and we adopt it for purposes of this decision. Briefly, the claimant testified that she worked as a grill cook for the employer. She claims that at about 12:30 p.m. on (date of injury), some grease splattered on her and burned her arm causing her to yell out, hit the side of the grill and fall to the floor injuring her back. She was pregnant at the time and she states she was on the floor about five minutes and then got up and went to the ladies room to put her arm under cold water. She did not tell anyone that she had been injured. Shortly after she came out of the ladies room, she was called into the office where she was terminated for prior, unrelated acts of insubordination to her supervisor. Because of alleged threats by the claimant, two police officers had been called to the employer's location and were present at the time of the termination. She states she went home and her stomach and back were bothering her and she was taken to the doctor by her stepfather, basically because she was concerned about her pregnancy. In an August 12, 1992 letter, the doctor affirms a minor first degree burn on her arm, and although the claimant testified he said her back looked okay, the doctor noted muscular strain of her right lower back. Another doctor she saw at a later time diagnosed a lumbar strain and prescribed physical therapy.

Witnesses presented by the carrier indicated they were present in the immediate vicinity of where the claimant alleges the injury occurred. They denied they heard her yell, and did not observe her fall to the floor or see any indication that she was injured. The claimant did not mention or report any injury to any of the witnesses. There was evidence that this was the busy lunch time trade for the employer and that it would have been impossible for the claimant to fall and sit on the floor for five minutes and be unobserved. The area manager had gone to the particular location on the date in question to terminate the claimant for prior, unrelated misconduct.

Credibility was a key matter in the resolution of this case. It is apparent, and there is support in the evidence, that the hearing officer did not believe the claimant's version of the asserted back injury. As 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)), the hearing officer can believe all, part or none of the testimony of a witness and believe one witness over another. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). Where the evidence is sufficient to support the determinations of the hearing officer, we have no basis to disturb the decision. Only if we were to determine, which we do not, that the findings of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would we set aside or otherwise disturb her decision. Texas Workers' Compensation Appeal No. 92232, decided July 20, 1992, and cases cited therein.

Accordingly, the decision is affirmed.

____

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

____

Philip F. O'Neill
Appeals Judge

____

Thomas A. Knapp
Appeals Judge