APPEAL NO. 92572

A contested case hearing was held in (city), Texas, on September 21, 1992, (hearing officer) presiding, to determine whether appellant (claimant) was injured in the course and scope of his employment with the (employer) on (date of injury), whether claimant timely reported such injury to employer, and whether claimant's disability and need for medical treatment resulted from such injury or from an injury on October 7, 1991. The hearing officer resolved these disputed issues against claimant who challenges the sufficiency of the evidence to support the hearing officer's findings and conclusions. Respondent (carrier) asserts that the evidence is sufficient and urges our affirmance.

DECISION

Finding the evidence sufficient to support the hearing officer's findings and conclusions, we affirm the decision.

Claimant testified that while working as a painter for employer on (date of injury), he lifted a 200 gallon air compressor onto a cart. Afterwards, he felt drained and light-headed, and his back hurt. However, he shrugged off his symptoms not believing anything serious had occurred. He did mention to his supervisor that his back hurt but did not make a report or otherwise "make a big deal of it" as he didn't think it was serious. He said he had not intended to file a workers' compensation claim but decided to do so after his spinal surgery on October 25th, and that he is not seeking benefits but only wants employer to acknowledge his job-related injury. He said he continued to have back pain off and on throughout the summer, and sometimes limped, but did not visit a doctor because he was on a six month probation for an April 1991 promotion and did not want to tell employer he had a back injury. Claimant's wife testified that in September, claimant's back pain was so pronounced she had to help him don his boots and trousers. She corroborated his testimony concerning his limping, and his self-treatment with Doan's pills and the application of heat to his back.

Claimant further testified that on October 7, 1991, while bent over to feed his dog, the dog ran into claimant striking claimant's temple with the dog's snout and knocking claimant out for about five minutes. The next day he went to the emergency room where he was referred to (Dr. V), a neurologist. According to claimant, Dr. V advised claimant he had a mild concussion and took him off work for one week. Claimant also related he had missed no work since (date of injury) because of his back injury. According to the only medical report of Dr. V in evidence, when claimant was under his care in October for the treatment of his "post-traumatic closed head injury with mild concussion syndrome," claimant never mentioned any neck or back pain.

Claimant also testified that on October 24th, he went to (Dr. A), a neurosurgeon, because his back pain had become much more severe and was radiating down his leg. The next day, Dr. A performed a lumbar laminectomy for an extruded disc at L4-5. Claimant said he told Dr. A about his lifting the air compressor in (month). However, Dr.

A's records stated that claimant said "that about four months ago, without any specific cause, he developed the onset of pain in the lower lumbar region." This record went on to state that "about two weeks ago, he had severe increase in his lumbar pain and yesterday, for the first time, the pain started to radiate severely down the left leg all the way to the foot." Claimant insisted he had sustained a herniated disc from the (date of injury) incident which apparently later ruptured, and said Dr. A told him almost any movement could cause the rupture of a herniated disc. According to Dr. A's records, he was called by claimant's wife on February 19, 1992, advised that claimant's workers' compensation claim was being denied because his low back problem was being attributed to the collision with his dog, whereupon Dr. A opined that working as a carpenter and painter, carrying heavy cans of paint and boards, and moving objects such as desks, was "much more likely to cause a herniated disc problem than the incident . . . involving the dog."

The hearing officer's discussion of the evidence indicates her recognition and evaluation of the conflicts in the evidence, particularly concerning whether claimant's undeniable back injury resulted from his having lifted the air compressor on (date of injury) or the collision with his dog on October 7th. She found his testimony in that regard not credible. She also found that while he reported back pain to his supervisor within 30 days of (date of injury), claimant did not report that his pain resulted from a job-related injury on (date of injury); and she further found that claimant had not been unable to obtain and retain employment at wages equivalent to those earned prior to (date of injury) because of an injury occurring on (date of injury). Based on these and related findings, the hearing officer concluded that claimant did not sustain a compensable injury within the course and scope of his employment on (date of injury), did not notify employer of such an injury within 30 days of (date of injury) as required by Article 8308-5.01, and did not have disability within the meaning of Article 8308-1.03(16) (1989 Act).

Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of the weight and credibility it is to be given. Claimant had the burden to prove by a preponderance of the evidence that he sustained an injury in the course and scope of his employment. Johnson v. Employer Reinsurance Corporation, 351 S.W.2d 936, 939 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer may believe all, part, or none of the testimony of any one witness, including claimant, and may give credence to testimony even where there are some discrepancies. Taylor v. Lewis, 553 S.W. 2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The hearing officer could disbelieve a portion of claimant's testimony if she saw fit to do so. Johnson *supra* at 939. As the trier of fact, it was for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W. 2d 701 (Tex. Civ. App.-Amarillo 1974, no writ.). We will not substitute our judgment for that of the hearing officer where, as here, the findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ). The challenged findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re Kings' Estate, 150 Tex. 662, 244 S.W.2d 660

(1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge