APPEAL NO. 92583

On September 15 and 23, 1992, a contested case hearing was held in (city), Texas with (hearing officer) presiding as the hearing officer. The hearing officer determined that the claimant, who is the respondent on appeal, suffered a compensable injury on (date of injury), and that he was 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). The employer, (employer), contested compensability when the carrier accepted liability for the claimant's injury. In its request for review, the employer contests certain findings of fact and a conclusion of law, requests additional findings of fact, and disagrees with certain portions of the hearing officer's statement of the case, statement of the evidence, and listing of exhibits. The claimant responds that he agrees with the decision and disagrees with the employer's appeal. At the hearing, evidence was also taken in regard to a dispute between the claimant and the carrier concerning disability. A separate decision entered on that matter is the subject of Texas Workers' Compensation Commission Appeal No. 92643, decided December 7, 1992.

DECISION

The decision of the hearing officer is affirmed.

The issue to be determined at the hearing, as between the claimant and the employer, was whether the claimant sustained an injury in the course and scope of his employment on (date of injury). The claimant testified that while he was working for his employer in the dipping room at about 11:30 a.m. on (date of injury), he slipped on a wet, slippery floor, fell down, and landed on his back. He said he was carrying molds from a tank of latex to an oven when the incident occurred. He said the floors were slippery from the latex and coagulant that had dripped off the molds. A coworker, Jose Rios, stated in an affidavit that he saw the claimant fall down. The claimant's supervisor, Victor Gomez, testified that the claimant and (Mr. R) told him that the claimant had fallen down at work on the day of the incident. The supervisor also testified that the floors in the dipping room are occasionally wet from the latex.

The claimant testified that his back started to hurt him the next day and that his back pain continued to get worse, although he worked for about 10 more days. On or about November 18, 1991, he called in sick to work and his employer took him to (Dr. G) who diagnosed a "severe contusion of the back," and released the claimant to light duty work. On December, 5, 1991, the claimant was examined by the doctor of his choice, (Dr. P), who diagnosed "thoracic syndrome," recommended physical therapy, and wrote that the claimant's prognosis was "guarded." (Dr. P) clinical findings were that the claimant had pain in his lumbosacral spine with limitation of motion and spastic paravertebral muscles, and that the claimant had pain and limitation of motion in his thoracic spine. On December 16, 1991, the claimant was examined by the carrier's doctor, (Dr. K), who diagnosed a "contusion of the soft tissues," reported that the claimant had reached maximum medical improvement (MMI) with a zero percent impairment rating, and released the claimant to return to regular work. The claimant did not return to work but continued to see (Dr. P). A

magnetic resonance imaging (MRI) of the claimant's lumbar spine done in February 1992 revealed posterior bulging of the L4-L5 and L5-S1 discs. A CT scan of the claimant's lumbar spine done in 1988 had been negative and a lumbar myelogram done the same year was unremarkable. An MRI of the claimant's lumbar spine done in 1987 suggested disc degeneration with disc protrusion.

On March 18, 1992, (Dr. P) released the claimant to light duty work. Work restrictions included avoiding stress on the lumbosacral spine, lifting anything over 20 pounds, bending, stooping, or climbing. The claimant returned to work for the employer on March 20th but said he was unable to perform the work due to back pain. (Dr. P) again released the claimant to light duty work on May 5, 1992, and the claimant returned to light duty work with the employer on or about May 12, 1992. On May 18th the claimant was examined by (Dr. K), who was the agreed designated doctor. (Dr. K's) diagnostic impression was that the claimant had a lumbar strain, and he recommended that the claimant take a work hardening program. (Dr. K) released the claimant to a "modified type of work" and wrote that the claimant could return to full work in four months. (Dr. K) reported in a TWCC-69 form that the claimant had not reached MMI. The claimant continued to work until August 25, 1992, when he said he experienced back pain at work and went to the hospital. On September 1, 1992, (Dr. P) took the claimant off work, but said that light duty work was really up to the claimant.

The employer's position at the hearing was that the claimant could not have sustained an injury on (date of injury), and that he did not sustain an injury in the course and scope of his employment. The employer introduced into evidence a time report which it claimed showed that the claimant did not start work on (date of injury), until 12:53 p.m. However, the number "10" on the report which indicated the month of the report to be October, had been written over with the number "11," which indicated the month of November. The employer explained that it had recycled the time report.

In describing the exact details of his accident, the claimant was at times inconsistent; however, he steadily maintained that he had fallen at work on (date of injury), and that he immediately reported the accident to his supervisor. The claimant's coworker, (Mr. R), corroborated the claimant's testimony concerning the occurrence of his fall, and the claimant's supervisor corroborated the claimant's testimony concerning the reporting of the accident to the employer. The claimant acknowledged that he had failed to inform several health care providers about a back injury he sustained in 1987 and that he failed to inform the benefit review officer that (Dr. P) had treated him for his prior back injury.

The hearing officer found that the claimant had a work-related accident on (date of injury), when he slipped and fell backward, striking rails around the vats and landing on his back on the floor, and further found that the claimant suffered back muscle spasms, pain with limitation of motion of the lumbosacral and thoracic spine, and posterior bulging of his L4-L5 and L5-S1 discs from his work-related accident. The hearing officer concluded that the claimant suffered a compensable injury on (date of injury), when he fell backward,

landing on his back while in the course and scope of his employment.

The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Article 8308-6.34(e). When presented with conflicting evidence the trier of fact may believe one witness and disbelieve others and may resolve inconsistencies in the testimony of any witness. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). The trier of fact also resolves conflicts and inconsistencies in the expert medical testimony and judges the weight and credibility to be given the expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We conclude that the hearing officer's findings are supported by sufficient evidence and are not against the great weight and preponderance of the evidence. The findings support the hearing officer's conclusion that the claimant sustained a compensable injury on (date of injury).

Concerning the employer's challenge to the hearing officer's Statement of the Case and Statement of the Evidence, we find that those statements, although not required by statute to be made, fairly represent the positions of the parties and the evidence. The additional nine findings of fact which the employer contends should have been made by the hearing officer were not required to be made under the evidence presented at the hearing. The evidence supports the findings of fact that the hearing officer did make, and those findings support his conclusion. That is all that is required.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge