APPEAL NO. 92585

A contested case hearing was held in (city), Texas, on September 28, 1992, (hearing officer) presiding as hearing officer. He determined the appellant (claimant) did not sustain an injury which arose out of and in the course and scope of employment and denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Claimant urges error in the hearing officer's determinations and argues that the evidence is sufficient to establish that a compensable injury was sustained. Claimant asks that the decision be reversed. Respondent (carrier) posits that there is sufficient evidence to support the hearing officer's findings and that affirmance is appropriate as the decision is not against the great weight and preponderance of the evidence as to be clearly wrong or unjust.

DECISION

Finding sufficient support in the record for the hearing officer's findings and conclusions, we affirm.

Three issues were announced and agreed to at the beginning of the hearing: whether the claimant sustained an injury in the course and scope of her employment on (date of injury); if so, did she have disability as a result of such injury; and, has the claimant reached maximum medical improvement (MMI) for the claimed injury. The case hinged largely on the credibility of the claimant's testimony and the weight of the other evidence offered by the parties. Succinctly, the claimant's duties included pushing pallets of insulation tier sheets (used to separate glass bottles) on to a set of rollers with a wooden handle. According to her testimony, at about 9 p.m. (she was on a 3 to 11 p.m. shift) on (date of injury), she was pushing a pallet forward when she sustained an injury to her lower back, left side, and left leg. She did not mention her injury to any one that night and completed her shift. She stated that her back was hurting her the next day and she called her employer to report her injury and then went to her doctor, Dr. W, (a chiropractor who had been treating her for a prior back injury). Claimant indicated that when she called her employer to report her injury, they wanted to send her to a medical doctor but she refused.

At the time of her injury, claimant had been back to work for approximately two months after a hiatus of some six months resulting from "panic attacks" or black out spells and a back injury suffered at home on September 29, 1990. Dr. W had treated the claimant for cervical spine and lumbar injuries from October 31, 1990 until she returned to work on April 7, 1991 pursuant to her request and after her disability pay terminated. Dr. W's reports indicated he treated the claimant from (date) on for lumbar sciatica, sprain and strain. Other medical records in the file indicate the claimant suffers from degenerative disc disease.

Three signed, notarized statements from a person described as a friend and coworkers were introduced by the carrier. Mr. B states that the claimant told him in (month), (year), that when she "went out again it would be on workers' comp." Mr. B also stated that the claimant had told him she "wanted to drop her Workers' Compensation claim and asked

me if she could draw group insurance disability benefits" and that the claimant "would complete the form saying it was not a job related accident." The claimant denies that she said anything about workers' compensation. The Personnel Administrative Assistant for the employer testified that Mr. B had come to her and stated that the claimant's claimed injury was not true and that she had told him about going out the next time on workers' compensation.

Claimant faults the hearing officer's finding of fact that the claimant predetermined she would subsequently file a workers' compensation claim in the event she was off work. This was contrary to her testimony and was, according to the claimant, only in a written statement from a witness that did not appear. As we noted earlier, the witness statement was not only signed but it was notarized. Such evidence is fully admissible and can appropriately be considered by the hearing officer. Article 8308-6.34(e); Texas Workers' Compensation Appeal No. 92069, decided April 1, 1992; Texas Workers' Compensation Commission Appeal No. 92144, decided May 28, 1992. Clearly, there was some probative evidence before the hearing officer regarding this finding and it was for him, as the sole judge of the weight and credibility of the evidence (Article 8308-6.34(e)), to give it the consideration he determined appropriate under the circumstances. We note he also found that the claimant gave inconsistent statements and that the medical records indicated that the complained of pains in the lower back and leg occurred before (date of injury).

Claimant also disagrees with the hearing officer's findings that she did not sustain an injury to her lower back, left side and left leg with the employer on (date of injury), and that she has been off work due to subjective symptoms of lower back pain and left leg pain which occurred prior to (date of injury). In sum, the hearing officer determined there was no new injury or aggravation of an existing injury or condition. We can not say, from a review of the entire record and the request for review and response thereto, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust or to otherwise warrant any curative action by the Appeals Panel. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. *See also* Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986). Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge