APPEAL NO. 92588

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). A contested case hearing was held on October 8, 1992, at (city), Texas before (hearing officer), hearing officer. The hearing officer held that the claimant, respondent herein, was injured within the course and scope of his employment on (date of injury).

The carrier argues on appeal that there is no evidence, or in the alternative insufficient evidence, to support the determination that claimant suffered a compensable injury on the above date, and it asks that we reverse the decision of the hearing officer. No response was filed by the claimant.

DECISION

We affirm the hearing officer's decision and order.

The claimant testified that he went to work for (employer) in January 1992, and that he had earlier worked for that employer for a period of about 10 years. On a date he said was either May 19th or 20th, he and two others were positioning a blowout preventer on a well by use of a chain. He said the chain slipped away from two other men so that it dragged claimant off. The claimant said he didn't feel immediate pain, and he continued to work the rest of the day. That night he said he began to experience back pain. He returned to work the next day, but said that around noon he told the operator, (Mr. G), that he wasn't feeling well and asked to be taken home. He said that his stomach hurt and that he vomited once; he did not tell Mr. G at that point that his back was hurting. Two or three days after the accident, when Mr. G came by claimant's house to pick him up, claimant told him he had hurt his back while putting the blowout preventer on.

A sworn transcription of the recorded statement of Mr. G was admitted into evidence. He recalled claimant's leaving the job site early because he was feeling sick, and that claimant called him to say he had hurt his back pulling the blowout preventer off, but he denied that claimant had been on the crew that pulled it off. Employer's work order invoices for crews for which Mr. G was the operator showed that claimant worked 14½ hours on May 20th and three hours on May 22nd. They do not show claimant working with that crew on May 19th, 21st, or 23rd.

Transcribed statements of claimant's coworkers, (MG) and (VB), were also admitted into evidence. Both remembered claimant becoming ill with a stomachache one day but could not remember a back injury. MG confirmed that claimant was working on the crew that picked up the blowout preventer, but denied that the others had let go of the chain while claimant was holding it. VB said the chain did not slip, and that nothing unusual happened that day. The claimant stated, in answer to a question from the hearing officer, that he did not tell his coworkers that he had hurt his back. He disagreed with Mr. G's statement that he was not at work the day the crew was working with the blowout preventer, stating that

Mr. G was "the one that picked us all up."

Claimant said he tried unsuccessfully to get Mr. G to complete an accident report so that he could go to a doctor. He said he was unable to find a doctor to treat him because the insurance would not pay. He said that he first saw a doctor, (Dr. D), a few weeks after his injury. Dr. D found lumbar sprain or strain and on July 1, 1992 took claimant off work until further notice.

On appeal, the carrier argues that there is no evidence to support the hearing officer's findings that the claimant sustained a compensable on-the-job injury on the date and time at issue. In the alternative, the carrier argues that the same findings are so against the overwhelming and great weight of the evidence as to be clearly wrong and manifestly unjust.

When reviewing a "no evidence" point of error, we examine the record for evidence that supports the finding while ignoring all evidence to the contrary. INA of Texas v. Howeth, 755 S.W.2d 534 (Tex. App.-Houston [1st Dist.] 1988, no writ). When reviewing a question of sufficiency of evidence, we consider and weigh all of the evidence in the case and set aside the decision if we conclude that the decision is so against the great weight and preponderance of the evidence as to be manifestly unjust. In Re King's Estate, 244 S.W.2d 660 (Tex. 1951). Under either standard of review, we do not find reason to overturn the hearing officer's decision.

In the instant case, claimant testified that, while he and the other crew members were positioning the blowout preventer, the chain slipped from the other crew members and carried him off. That night, he said he began to experience back pain but by his own admission did not tell his supervisor for another two or three days, and did not mention the injury to the other workers. The carrier places great reliance on the coworkers' statements that they could not recall the incident, and on claimant's answers to cross-examination questions concerning how the chain's slipping would be an event of great magnitude. We note that the claimant, in answer to the hearing officer's question about how common an occurrence this event would be, answered, "[s]ometimes. It don't (sic) happen that much." He also confirmed that the rather large (estimated by claimant at 1,000 pounds) blowout preventer did not fall; rather, he just got pulled along by the chain. The carrier also relies on claimant's testimony that he was willing to accept the coworkers' statements. However, the claimant, who was pro se and was assisted at times during the hearing with English-Spanish translation by the ombudsman, also stated he could not read and that the statements had been read to him.

The hearing officer is the trier of fact in a contested case hearing and is the sole judge of the relevance and materiality of the evidence offered and of its weight and credibility. Article 8308-6.34(e) and (g). As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the testimony. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all or part or none of the testimony of any one witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-

Amarillo 1977, writ ref'd n.r.e.). A claimant's testimony, if believed, can support a finding of injury in the course and scope of employment. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ).

Upon review of the record in this case, we cannot say that the hearing officer's decision was not supported by sufficient evidence, nor that it was so against the great weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We accordingly affirm the hearing officer's decision and order.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge