APPEAL NO. 92646

On October 30, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer determined that the appellant, claimant herein, did not sustain an injury to his left knee in the course and scope of his employment with (employer) on (date of injury), and denied him benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Claimant appealed contending that the hearing officer's decision is not supported by the evidence and requests we render a new decision in claimant's favor or remand for a second contested case hearing (CCH). Respondent, carrier herein, filed a response requesting that the hearing officer's decision be upheld.

DECISION

The evidence being sufficient to support the findings and conclusions of the hearing officer, the decision is affirmed.

The evidence, as found by the hearing officer, was that claimant was a 31-year-old oil rig worker who was employed as a roughneck on a rig. Claimant testified he had worked the rig in question since October 1989. At approximately 3:00 a.m. on (date of injury), claimant picked up (PF), the driller, and (B) (sometimes called (W)) (BG), a floorhand. They drove to work, changed clothes in a shack, and by 5:30 a.m. were working on the drilling rig pumps. There were two pumps which were very close together and workers on one pump would be clearly visible to workers on the other pump. The testimony was that BG, (RB), PF and claimant were working on one pump. Claimant's testimony was that during the afternoon claimant went to work on the adjacent pump and while working on the second pump, oil from the pump got on claimant's boot causing claimant's foot to slip and resulting in claimant banging his left leg and knee into an angle iron guardrail. Claimant's testimony was that the injury was very painful but that he "walked it off," splashed water on his face and continued work. On the way home BG, PF and claimant stopped at a convenience store. Claimant testified he had difficulty moving his leg and had to lift the leg with his hands. PF asked what was wrong and claimant stated "I guess I hurt my leg," to which PF replied "[a]w, you'll be all right." Claimant stated he did not report the injury when it occurred because "it is not the right thing to do."

The carrier presented as witnesses BG, (BN), BG's girlfriend, and (HS). The testimony presented was that claimant had been off work due to a dog bite and that on (date) (the day before the alleged accident), claimant had come to BG's house looking for PF to see about working the following day. BG, his girlfriend, (HS) and others had been playing volleyball and were sitting on the porch when claimant arrived. After finding PF wasn't there, claimant joined the group, took off his shoes, rolled up his pants and played volleyball with the group for a few hours. BG, (BN) and (HS) all testified that in the course of the game claimant stumbled and was subsequently seen by one or more of the witnesses to be rubbing his knee as though it had been injured. There was also testimony from BG that he noticed claimant's knee was swollen as they were changing clothes prior to starting

work on (date of injury). Carrier also presented testimony from BG and a written signed noted by PF, RB and BG that on "(date of injury) from 5:30 a.m. to 5:30 p.m. & he [claimant] did not fall while at work (sic) This crew was also here with him (sic)"

Claimant denies having been injured playing volleyball on (date), denied having acted injured or having told anyone he was injured. Claimant also denied conversations about quitting his job. Claimant testified the other workers didn't see him fall on (date of injury) because they were working on the other pump and had their backs turned toward him. Claimant testified that it was not possible to converse at the site because of noise from the rig.

There was some disputed testimony as to whether, or how long, claimant was working on the second pump, and exactly what was said during the convenience store stop on the way home. Exactly what happened at the volleyball game is also in dispute.

The issue at the benefit review conference and as framed in the CCH was:

Whether claimant injured his left knee in the course and scope of employment while employed by [employer] on (date of injury).

The hearing officer in her discussion pointed out that the claimant must "prove by a preponderance of the credible evidence that he injured his left knee in the course and scope of his employment." The hearing officer stated that claimant's "testimony that he was injured when he slipped trying to jump off a pump at work on (date of injury) is not sufficiently reliable to constitute the necessary preponderance of the credible evidence which is required for claimant to prevail."

Claimant's appeal reviews the testimony and evidence favorable to the claimant and which could lead one to draw conclusions that claimant injured his knee on (date of injury) as he described.

The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Article 8308-6.34(e). She had the opportunity to hear the witnesses and observe their demeanor. 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, 697 (Texas 1986). There was evidence presented both supporting and disputing claimant's version. The hearing officer had the opportunity to assess the credibility of the witnesses appearing before her, and to assess the impact of a changing version of a particular portion of testimony. Obviously, the hearing officer did not find the claimant's version entirely reliable or credible. The hearing officer's finding and decision are supported by testimony and evidence from all of the oil rig crew that they did not see claimant fall as he testified, did not hear him cry out when he was allegedly injured and that claimant only said "I guess I hurt my leg" without specifying how or when, during the two hour ride home on (date of injury). There was also evidence from

participants in a volleyball game on (date) explaining how and under what circumstances claimant may have injured his knee. We will reverse the hearing officer, based on insufficiency of the evidence, only if the evidence supporting the hearing officer's determination is so weak or so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio, 1983, writ ref'd n.r.e); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951) and Texas Workers' Compensation Commission Appeal No. 92447, decided October 5, 1992. In considering a challenge to the sufficiency of the evidence, we recognize the function of the hearing officer, as the trier of fact, to judge the credibility of the witnesses, assign weight to be given their testimony, and resolve any conflicts or inconsistency in the testimony. Texas Employers' Insurance Association v. Jackson, 719 S.W.2d 245 (Tex. App.-El Paso 1986, writ ref'd n.r.e). Applying these standards of review, we conclude that sufficient evidence exists to support the hearing officer's findings and decision. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ).

The decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge