APPEAL NO. 92679

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). A contested case hearing was held in (city), Texas, on October 20, 1992, to determine whether appellant (claimant) was injured in the course and scope of her employment on or about (date of injury), and if so, whether she sustained disability from such injury on that date. The hearing officer determined these issues adversely to claimant who timely requests our review and challenges the sufficiency of the evidence.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, we affirm.

Claimant testified that on (date of injury), she commenced work as a cook's assistant at about 11:30 a.m., and shortly thereafter, while working in the kitchen area of the (county) County jail where the corrections officers were served their meals at a cafeteria line, she slipped and fell while carrying three buckets of silverware to the silverware racks. She said she slipped on grease in front of the stove, both feet went out in front of her, and she fell flat on her back and head, spilling some of the silverware. She immediately got up from the floor because she was embarrassed and picked up the fallen silverware. About 20 minutes later, at the suggestion of a coworker, claimant said she reported her fall to the assistant food service manager, (Mr. S). Claimant also testified that two coworkers, (Ms. B) and (Ms. P), were present in the serving line area and that she walked behind them and slipped and fell next to the stove. She said that ((Ms. P) saw her on the floor and asked if she was all right, and that when she was on the floor (Ms. P) would have been in the area where her head was and (Ms. B) by her feet. Claimant resumed working but later began to experience severe pain and was assisted back to (Mr. S's) office. Her doctor was called and claimant was told to go to a local hospital. Claimant testified that at around 3:00 p.m. she was given a ride to the hospital by a coworker and that (Ms. P) accompanied her. Claimant was discharged from the hospital later that day, taken off work for one day, and told by the doctor she could return to work the following Monday. She did work that Monday but returned to the hospital for pain and eventually changed treating doctors because of her dissatisfaction with her treatment. Claimant conceded that she had called the police to her residence on several occasions before the (date of injury) incident because of the threats and violent conduct of her husband. On the night before her accident at work, claimant's husband hit her on the head with a small steel eagle and, according to the police report of the incident, she passed out. However, claimant denied being injured and unable to perform her duties when reporting for work on (date of injury).

(Ms. P) testified that on (date of injury), while working behind the serving line, she heard silverware hitting the floor, immediately turned her head, and saw claimant kneeling down on one knee picking it up from the floor. She said she was in the food service area the entire time that day and neither saw nor heard claimant fall to the floor. She also

testified that no one ever told her that claimant had fallen and she had no recall of accompanying claimant to the hospital on (date of injury). (Mr. S) identified as accurate a sketch of the area where claimant said she fell, including the locations of the grill, serving line, and silverware rack. The sketch showed a distance of 47 inches from the back of the serving line, behind which stood (Ms. P) and (Ms. B), to the front of the grill where claimant testified she fell. It was eight feet from the grill to the silverware rack where (Ms. P) testified she saw claimant kneeling down picking up silverware from the floor, and the sketch showed no apparent obstructions to view in that narrow working area. (Mr. S) testified that not being in the kitchen area he neither saw nor heard claimant fall. As far as he knew, claimant appeared able to work on the preceding day and on (date of injury). He completed a report of injury on (date of injury) based on claimant's revelations, but did not investigate the accident nor take information from either (Ms. P) or from (Ms. B), who was no longer employed there at the time of the hearing. He said claimant was in good spirits when she first reported the accident, but when she returned the second time she appeared to be in pain.

In her request for review claimant includes two Specific and Subsequent Medical Report forms (TWCC-64), dated "10-08-92" and "11-17-92," and states they are enclosed for our consideration "as they were not available at the time of the CCH." Our review is limited by Article 8308-6.42(a) to the record developed at the hearing which, in this case, was closed on October 20, 1992. Thus, one of the TWCC-64 forms antedated the hearing and the other was subsequently obtained. Claimant offered no explanation for not adducing the earlier TWCC-64 at the hearing. Both forms are cumulative since they simply continue the previous diagnosis of claimant's treating doctor (cervical neuritis or radiculitis and herniated cervical disk) and indicate claimant continues to be able to return to limited work. Such evidence does not warrant remand for further consideration and development of the evidence since consideration of these forms by the hearing officer would not probably produce a different result concerning the occurrence of a compensable injury were a new hearing granted. *See* Texas Workers' Compensation Commission Appeal No. 92444, decided October 5, 1992, and Texas Workers' Compensation Commission Appeal No. 92459, decided October 12, 1992.

The disputed issues in this case presented questions of fact for the hearing officer, as the trier of fact, to decide. Article 8306-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of its weight and credibility. This case obviously turned on claimant's credibility. She insisted she fell flat on her back and head in a confined area in the presence of two coworkers while (Ms. P) testified that when she heard silverware hit the floor, she immediately turned her head and saw claimant kneeling down picking it up. The hearing officer found that while claimant did spill some silverware onto the floor, she did not slip or fall on the floor while carrying the silverware. Accordingly, the hearing officer concluded that claimant was not injured in the course and scope of her employment and did not suffer disability. Although evidence was adduced concerning the issue of disability, we do not set it forth here because we have previously observed that a finding of compensable injury is a threshold issue and a

prerequisite to consideration of the issue of disability. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993. The hearing officer may believe all, part, or none of the testimony of a witness (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and may believe one witness and disbelieve others. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). We do not substitute our judgment for that of the hearing officer where, as here, the challenged findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). The findings and conclusions of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's 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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge