APPEAL NO. 92711

A contested case hearing was held in (city), Texas, on November 3, 1992, (hearing officer) presiding, to determine whether respondent (claimant) was injured in the course and scope of his employment on (date of injury). The hearing officer determined this issue in claimant's favor and appellant (carrier) has requested our review challenging the sufficiency of the evidence to support the hearing officer's decision.

DECISION

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

The claimant testified that he had worked as a feeder driver for (employer) for 19 years without an injury or workers' compensation claim, that on (date of injury), while unloading his truck, he lifted a package and turned to set it on the conveyor rollers, "and that is when I felt something give in my back." He experienced discomfort for about four days but by August 4th, his back was "hurting real bad," so he called his supervisor, (EB), that day and advised him of his back problem and desire to be off work to see a doctor. Claimant testified at one point that he did not recall whether he told (Mr. B) on August 4th how the injury occurred. At another point he denied telling (Mr. B) he did not know how he injured his back insisting he did tell (Mr. B) he hurt it at work. (Mr. B) testified that in that discussion claimant said he did not know how he hurt his back.

Claimant also testified he had several telephone conversations in August with (SJ), employer's medical services supervisor, who, according to claimant, seemed to be pushing him to file a claim for disability payments under his union's disabiity insurance policy. (Ms. J) testified that when she spoke with claimant on August 14th, he told her that he did not want to file a workers' compensation claim at first because he did not want it on his record, and because he initially thought his injury was not serious and would clear up in a few days. However, claimant went on to tell her the injury was taking up far more time and he did not have the financial resources to cope with the consequences and needed to file a claim. She said he also said he did not pursue a disability claim with his union because he would have been told to file a workers' compensation claim and he would then be "stuck in the middle." As with (Mr. B), claimant denied telling (Ms. J) during their first conversation that he did not know how he injured his back, and (Ms. J) testified to the contrary.

Claimant introduced statements from two coworkers to the effect that he told them while at work on (date of injury) that he had hurt his back. The carrier introduced an employer's injury report form, signed by claimant on August 14th, which stated his injury date as (date of injury), and which contained his statement that, "I lifted a package and when I turned to set it on the rollers, I felt something in my back give." There was no disputed issue regarding the timeliness of claimant's reporting his injury to employer, and the witness' examinations on the subject of what claimant said to (Mr. B) and (Ms. J) during his several telephone conversations with them in August (well within 30 days of his injury) seemed

directed towards the issue of claimant's credibility.

Claimant saw a chiropractor on August 6th who took him off work indefinitelty for a probable disc herniation. Claimant testified he subsequently saw a neurosurgeon, underwent back surgery, and had not yet returned to work.

The hearing officer, after finding that claimant injured his back while lifting a package and turning to place it on a conveyor belt at 12:30 a.m., on (date of injury), at employer's (city) Center, concluded he was injured in the course and scope of his employment. We view the evidence sufficient to support the findings and conclusions of the hearing officer.

Article 8308-6.34(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. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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.)). Though not obligated to accept the testimony of a claimant, an interested witness, at face value (Garza, *supra*), issues of injury and disability may be established by the testimony of a claimant alone. *See e.g*. Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992. As an interested party, the claimant's testimony only raises an issue of fact for determination by the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo, no writ). 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 (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