

APPEAL NO. 93006
FILED ON FEBRUARY 16, 1993

A contested case hearing was held on October 21, 1992, at (city) Texas, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) did not sustain an injury in the course and scope of her employment and has not had disability as a result of the claimed injury. Accordingly, benefits were denied under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). Disagreeing with the decision, the claimant files this appeal. Respondent (carrier) asks that the decision be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and that his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, we affirm.

The evidence is thoroughly and fairly set forth in the decision of the hearing officer and is adopted herein for purposes of our action in this case. Very briefly, the claimant alleges she hurt her back at work on (date of injury), when she lifted some paper bags. She testified that she did not feel anything particular at the time but did feel pain later on and had difficulty getting up the following morning. She did not tell anyone she had injured herself until a couple of days later when she returned to the employer's store and told a supervisor that her back hurt because of lifting the paper bags. She subsequently went to a doctor who noted pain in her back radiating down her left leg, but who hospitalized her because of excessively high blood pressure (apparently a recurring problem). The medical records do not indicate her injury was job related and she was not taken off work although she stated the doctor "left it up to me, if I was able to go back to work." An x-ray on October 12, 1991, showed that there was minimal disc space narrowing at the L4-5 level. A bone scan from head to ankles on October 17, 1991, was normal. An MRI on October 18, 1991, showed a normal MRI study of the left hip. The MRI of the lumbar spine showed mild disc space narrowing at the L4-5 level. There was associated change of decreased hydration, and evidence of herniation of the disc at that level, producing very minimal impingement on the thecal sac for perhaps 2 or 3mm. Otherwise, the MRI of the lumbar spine was normal. (There is a document in the record involving another type of program dated some seven months following the alleged injury date which indicates that she is not able to work). The claimant had injured her back previously in 1985 and successfully filed a claim for workers' compensation benefits. In the instant case, the claimant used her group health plan to pay for medical treatment and did not initially seek to file under workers' compensation. She stated that her employer told her it was not work related.

The carrier presented a signed statement of a supervisor the claimant called on October 8th and 9th. This statement indicated that the claimant had called in to say she would not be in because she hurt her back but that no mention was made that the injury was work related. An unsigned, and unobjected to, phone interview of one of the claimant's

coworkers was admitted. The coworker stated that she talked with the claimant when the claimant came to employer's place of business following the alleged injury, and that the claimant told her she had injured her back at home doing some housework. Claimant denied that this conversation ever occurred.

With the evidence in this posture, the hearing officer found against the claimant. Clearly, there was evidence to support that finding. Under the 1989 Act, the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). We have repeatedly held that where, as here, there is sufficient evidence to support the decision of the hearing

officer and his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, we have no sound basis to reverse or otherwise disturb his Decision and Order. See Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992; Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. Also see In re King's Estate, 244 S.W.2d 660 (Tex. 1951). The Decision and Order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge