APPEAL NO. 93083

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held on December 21, 1992, in (city), Texas, (hearing officer) presiding. The three issues before the hearing officer were whether an incident occurred in the course and scope of claimant's employment on (date of injury) that caused a back injury; whether claimant reported a work-related injury no later than 30 days after (date of injury); and if claimant suffered a compensable injury on (date of injury), whether this injury produced disability. The claimant, appellant in this action, seeks our review of the hearing officer's decision that claimant did not establish that she suffered a compensable injury on the above date, and of her order that the respondent, claimant's employer's workers' compensation insurance carrier, is not liable for benefits on this claim.

DECISION

Upon review of the record in this case, we affirm the hearing officer's decision and order.

The claimant testified that she had been employed by (employer) as an insurance representative for approximately five years. On (date of injury), she said, she slipped and fell halfway down a flight of stairs while exiting the building during a fire drill at work. Downstairs in the parking garage she said she told a coworker, Carlos Mayorga, that she had fallen on the stairs. She continued to work the rest of that day, but the next day she called her supervisor, NR, and told her she was hurting from her fall down the stairs the previous day. She said she also called later that day and spoke with the "lead person," AS, to say she was getting more sore. She remained off work until February 11th.

Claimant first saw her family doctor, Dr. S, but only to request a doctor's statement because she had been off work five days. Dr. S performed a brief examination but did not perform any tests or prescribe any medication. Dr. S return to work statement dated February 10, 1992, gave claimant's injury or illness as "Myositis/Dorsal, Thorax." A September 22nd note from Dr. S states, "Pt. states she fell down some steps in Jan. and didn't have an auto accident." On September 23rd Dr. S wrote, "[claimant] was first seen Feb. 3, 1992. At that time, it was my understanding she had had an auto accident the previous week. She now states that she fell down some stairs and was not involved in an auto accident." Claimant stated that Dr. S assumed she had been in an accident only after the carrier told him she had reported an auto accident. She said she knew the carrier called Dr. S because they called her at home and asked for his telephone number.

Claimant missed a few days from work after she returned on February 11th because of back and neck pain, and then stopped working entirely on February 21st. She was terminated by employer on April 21st.

On May 13th, the claimant first saw Dr. F, whose initial medical report of that date

noted ". . .injured during a fire drill walking down fire escape. Fell on behind, developed back pain. Took 24 hours to feel it. Has pain in lumbar, cervical, R leg areas. . .1990 - Injured back, off 11 months. . .Denies other illness." Dr. F diagnosed cervical and lumbar strain, and prescribed medication and physical therapy.

The carrier's only witness was employer's workers' compensation administrator, JR, who had conducted an investigation with regard to this claim. She testified that two of claimant's supervisors--NR and employer's department manager, SSI--told her that claimant called them on January 24th and reported she had injured her back in an automobile accident. Ms. R said the eight or nine people she interviewed all remembered something about an automobile accident occurring on or about that time. Also, in transcribed statements, Ms. R and CM said they remembered a fire drill in January but were not told claimant had injured her back during the drill. Coworkers JH and JK gave unsigned statements that they did not see claimant fall, although Ms. H remembered claimant saying she was "sore all over" after walking down all the flights of stairs. Ms. K said she vaguely remembered someone saying claimant had fallen on the stairs, but she could not remember who had said that. Claimant had earlier testified that it was Ms. R who so informed Ms. K. She also said Ms. R called her at home on January 24th to ask whether she was going to be off because of workers' compensation, and whether she wanted to take a leave of absence. Claimant said because of her concerns that she would lose her job if she took a leave of absence, Ms. R later called her back and said she could use vacation time.

A time sheet from January 24th showed the notation "called in auto accident" next to claimant's name. Ms. R said these time sheets were generated by the secretary for the department manager, Ms. S, on a daily basis, and were not prepared for the hearing. On cross-examination, Ms. R said she had no personal knowledge as to who wrote the notation. The claimant identified several time sheets that included other days she had been off work; the notation on those sheets was an unspecified "sick" or "ill."

Claimant testified that she had a work-related back injury in 1990, and an automobile accident in 1989, but unequivocally denied that she had been in an accident on or about (date of injury).

In her request for review, the claimant contends that the evidence in the record preponderates in favor of a determination that she suffered a compensable injury on (date of injury), and that she informed her employer of the injury within 30 days. In support of this, she stresses her own testimony regarding her conversations with Ms. R and others concerning her fall, and she points out that Dr. S only mentioned an automobile accident when called upon to give a statement that claimant had not reported such an accident. However, to the extent that the claimant's appeal appears to offer new facts which were not contained in the record below, they will not be considered, as the Appeals Panel is limited in its evidentiary consideration to the record developed at the contested case hearing.

Article 8308-6.42(a)(1); Texas Workers' Compensation Commission Appeal No. 91132, decided February 14, 1992. In addition, this panel lacks jurisdiction to address claimant's complaints about the quality of the representation she received.

A claimant in a workers' compensation case has the burden to establish that he or she suffered an injury in the course and scope of employment. Washington v. Aetna Casualty & Surety Company, 521 S.W.2d 313 (Tex. Civ. App.-Fort Worth 1975, no writ). While the testimony of a claimant can establish the existence of an injury, even the uncontradicted testimony of a claimant as an interested witness does nothing more than raise an issue of fact unless such testimony is clear, direct, and positive, and there are no circumstances in evidence tending to discredit or impeach such testimony. Anchor Casualty Co. v. Bowers, 393 S.W.2d 168 (Tex. 1965).

The evidence in this case was conflicting and contradictory, with the claimant testifying to one set of events which are contradicted by the statements of her supervisors and coworkers. It is the hearing officer's responsibility, as trier of fact, to review and weigh the evidence, and to resolve any conflicts and inconsistencies therein. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Eastland 1980, no writ). We do not substitute our judgment for that of the hearing officer when the challenged findings and conclusions are supported by some evidence of probative value. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). That is the case here, where the hearing officer could elect to give more credence to the written statements of coworkers and the testimony of Ms. Reiter, to the effect that claimant did not report a back injury from a fall. Upon review of the evidence in the record below, we cannot say that the hearing officer's decision is based on insufficient evidence, nor that it is so against the great weight and preponderance of the evidence as to be manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge