APPEAL NO. 93088

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1993). On December 18, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant, claimant herein, did not incur an injury in the course and scope of employment on (date of injury), that claimant had made a valid agreement not to pursue that claim, and that claimant did not show good cause to renege on that agreement. Claimant asserts that she was injured compensably on (date of injury) and that the agreement was not valid. Respondent, carrier herein, argues that the hearing officer was correct. Claimant replied to carrier's comments on the evidence within the time for a response so her reply was also considered.

DECISION

Finding that the decision and order are supported by sufficient evidence, we affirm.

Claimant worked as a claims adjuster for an insurance company, which handled workers' compensation insurance coverage, for over two years when she was fired on (date of injury). As a part of the exiting process for claimant, (MH) the administration manager of the employing company, followed claimant to her desk to observe her as she removed her personal items. Boxes were provided to claimant for removal of her property at that time. Once packed, guards were called to assist in carrying the boxes to claimant's car. MH testified that she never left claimant's side once the exiting process started until claimant entered the elevator. MH testified that claimant did not carry any boxes away from her desk; MH did agree that claimant unplugged a personal electrical cord from beneath her desk, but did not hear her moan or observe her fall forward underneath the desk.

Claimant's testimony as to the issue of her alleged injury was as follows:

And I had to stoop down. I grabbed ahold (sic) of the front of the desk to try to reach the surger to pull it toward the front. I could not reach it. I lost my balance.

I fell forward on my knees and on my hands. And that was when I did moan.

.....

Q: Who else was around when you were injured?

A:When I was--I aggravated my back when I fell underneath the desk, and (MH) was the only one standing there.

Claimant did not testify that she injured herself, or her back, in any other way on (date of injury), but referred to lifting boxes as follows:

A:. . . I called (HP) to tell him about the files . . . I also told him that I aggravated my back lifting those boxes.

.....

Q:Is it your testimony, under oath, that you told [Mr. G], in the parking garage, that you had injured yourself?

A: Yes . . . I asked him to make note in his log notes.

Q:Of?

A: Of my hurting my back. I was not able to stand up when we finished with the process of putting boxes in the car. I was having problems standing up straight, even when we were going down in the elevator.

Medical evidence provided at the hearing indicated that claimant visited (Dr. G) on June 13, 1991. Dr. G's report of that visit shows that he recorded her history as follows: "Pt. re-aggrivated (sic) back when she climbed under desk to unplug fan. Complaining of difficulty getting up out of chair due to back." He diagnosed a cervical and dorsal strain. Dr. G also commented in his prognosis "[f]avorable to resume full time work" and "[p]t. did not show up for physical therapy treatments as ordered."

HP testified that he was one of claimant's supervisors and that she did not report an injury to him on June 5, 1991. He stated that he was certain of that fact because he kept a "personnel file for (claimant), and if she would have reported some--an injury to me, I would have made a notation in the file and I would have informed . . ." Mr. G testified that he is a security guard for the building where claimant worked and knew her from working there. He assisted in carrying her personal property in boxes to her car. He testified that he does not recall claimant reporting any injury to him, that he did not notice any physical problem she was having, and that he could not recall that she carried any box.

The only other issue in this hearing was whether claimant entered into a binding agreement at the benefit review conference prohibiting her from pursuing a claim for an alleged (date of injury) injury. Claimant did not assert, either at the hearing or on appeal, that the document that she, the carrier, and the benefit review officer signed on September 20, 1991 was a settlement as opposed to an agreement under the terms of Article 8308-6.15, so the agreement will not be reviewed as a settlement. Claimant did assert that the benefit review officer "did not sign the benefit review conference agreement on 9-20-91 and misdated the documents to misrepresent the true date signed." All parties agree that the

agreement in issue, Carrier's Exhibit A, was one of several agreements signed between carrier and claimant, but that the rest of the agreements were compromise settlement agreements reflective of alleged injuries under the law prior to the 1989 Act.

The benefit review officer who conducted the September 20, 1991 benefit review conference was (LT). She testified that on that date several of claimant's claims, under both old law and the 1989 Act, were intensively discussed prior to agreements being reached. She said:

> After the conference on September 20th, there--I want to say that there were five, I don't remember for sure, but I think there were five old law claims and either one or two new law claims. And all of those files were stacked up and all over my desk whenever we got through with the hearing. At that point, the other parties had signed it, but I had not. And I went ahead and let everybody out the door because it was after 5:00 o'clock. And then went back and worked on signing the agreements and making sure that everything was in the right file to go back to the bank. So that would be the reason why my signature was not on the agreements at the time that I gave copies to everybody. The reason for the copies was, so that everyone could get their copy and make their planes and get out of here. And I didn't take time for me to sign them before I handed out copies.

In regard specifically to the agreement that said claimant would not pursue the claim of injury on (date of injury), LT said, "I signed it immediately after everybody left. I escorted everybody out the door, and then I went back and as I was putting the files away, that's when I signed it."

LT also testified that the agreement as to the (date of injury) alleged injury was tied to all the agreements dealing with injuries prior to the 1989 Act. "It was all a package deal." The record indicates the parties understood that under prior law compromise settlement agreements were not final until approved in Austin and before that time either party could negate the compromise settlement agreement. LT said that claimant called her a day or two after September 20th and expressed several concerns about the compromise settlement agreements under prior law; one was "the 5 and 5 problem, that if she filed five claims within five years, that the Attorney General would look at it as to whether or not it was fraudulent." As a result, there was another meeting in early October 1991 to revisit the compromise settlement agreements. (We note that in claimant's appeal she says "[c]arrier has breached the agreement signed on 10-3-91 by refusing to authorize reasonable and necessary medical treatment since 1-31-91." The agreement in question before this hearing officer was signed September 20, 1991, not 10-3-91. Only because there was evidence that the September 20, 1991 agreement as to an alleged injury of (date of injury) was considered by some as a "package deal" with compromise settlement agreements

made on September 20, 1991--and later renegotiated in early October 1991--are any of the approximately two to five compromise settlement agreements before this hearing officer. Claimant's reference to a carrier's breach refers to an allegation in regard to one or more compromise settlement agreements because claimant says the date of signing is "10-3-91" and she questions medical care "since 1-31-91," while the alleged injury under the 1989 Act did not arise until (date of injury), and the one agreement as to that injury was made on September 20, 1991.)

Claimant further testified, though, that she was coerced into signing the compromise settlement agreements of early October, stating that she was always in the company of the benefit review officer, the attorney for carrier, and the employer representative with no opportunity to meet alone with the benefit review officer. LT contradicted that statement saying that the parties were in different rooms and she went back and forth between the rooms. LT testified:

> It was a dickering process, a negotiation process going back and forth with, first, all of them together, and then they were in separate rooms and I was going back and forth between the rooms. And she would say "[w]ell, this is what I want." And I would go into them and say "[t]his is what she's saying she wants. What can you all do?" And they would finally agree "[o]kay, we'll do that." And I'd go back, and she'd say "I also want this."

Claimant also on October 3, 1992 signed, under oath, a statement that addressed several claims and said "(s)pecifically, but without limitation, I did not sustain any new injuries on (date of injury), and I do not seek any Texas Workers' (sic) compensation benefits for any injuries of that date."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. As an interested witness, claimant's testimony was not required to be accepted at face value. *See* Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The hearing officer could give more weight to the testimony of MH, who testified not only that she observed claimant at the time of the alleged injury and saw no injury, but that she was specifically watching her as she left because of all the prior claims. The hearing officer could also have chosen to believe the testimony of HP that claimant reported no injury to him, rather than that of claimant that she did report an injury. In judging claimant's credibility, the hearing officer could also consider that LT, the benefit review officer, contradicted claimant about whether claimant was able to see her alone during the October meeting. The history given to a medical practitioner does not have to be taken as proof that the incident happened as related therein. *See* Texas Workers' Compensation Commission Appeal No. 92194, dated June 2, 1992. The finding of fact and conclusion of law that claimant was not injured in the course and scope of employment on (date of injury) were sufficiently supported by the evidence.

The hearing officer, in considering whether the September 20, 1991 agreement was binding, was guided by the provisions of Article 8308-6.15(a) and (c) of the 1989 Act and W. C. Comm'n, TEX. ADMIN. CODE § 147.4 (Rule 147.4). Under the criteria of rule 147.4, the agreement signed by claimant, the employer's representative, carrier, and benefit review officer could be found to be binding on the day the benefit review officer signed it, which in this instance was September 20, 1991. This rule provides no specific provisions for signing an agreement and allows parties to sign and then mail it to the benefit review officer for his or her signature at a later date. The hearing officer then considered whether there was good cause to relieve the claimant of her agreement. He was presented abundant evidence that claimant knew what she was doing, in part based on her background, even though she had no lawyer. He also had claimant's sworn statement made after she signed the agreement in question that she sustained no new injury on (date of injury), the subject matter of the agreement in question. Whether this agreement under the 1989 Act was inextricably tied to agreements under prior law which were renegotiated was for the hearing officer to consider. The hearing officer heard abundant evidence as to the negotiating process,not just of this agreement but as to agreements made under prior law. He could consider that the agreement in question contained no clause conditioning its validity upon the acceptance of, or performance under, any other contract. The evidence was sufficient to indicate to the hearing officer that the carrier had neither tried to negate, failed to follow, nor sought to renegotiate any compromise settlement agreement made on September 20, 1991; evidence was sufficient to indicate, however, that claimant called for the renegotiation of the other agreements but did not seek to change this agreement. The hearing officer's decision that good cause was not present to relieve claimant of the agreement in question was not an abuse of his discretion. The binding effect of the agreement and the decision that there was not good cause to relieve claimant of it were both supported by sufficient evidence. *See* Texas Workers' Compensation Commission Appeal No. 92124, dated May 11, 1992.

The decision and order are not against the great weight and preponderance of the evidence and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge