APPEAL NO. 931081

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S. Article 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on October 26, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) did not sustain an injury in the course and scope of his employment on (date of injury), and that he has not had disability. The claimant appeals citing what he believes to be matters in the evidence before the hearing officer that support his claim. The respondent (carrier) details the evidence that supports the decision of the hearing officer and asks that the decision be affirmed.

DECISION

Finding the evidence sufficient to support the hearing officer's findings and conclusions, the decision is affirmed.

This case hinged on the credibility of the claimant and the hearing officer quite apparently did not give a great deal of weight to his testimony. 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. Section 410.165(a). We find absolutely no basis to disturb her assessment in this case.

Very briefly, the claimant was employed as a security guard for the employer (a security company). On (date of injury), the empty building he was guarding was broken into and the claimant asserts that the perpetrators of the break-in pushed a door against him as he was exiting a restroom causing him to fall against a sink and fall to the floor resulting in some injury to his neck and shoulder. A co-worker, who no longer works for the employer, indicated that when he came on duty to relieve the claimant, the police were there talking to the claimant and that the claimant appeared to be shaken-up. Upon his request to see a doctor on June 7th, the claimant was sent to a company doctor where he ultimately refused treatment because the employer requested that the claimant take a drug test. A medical report admitted into evidence indicated "suboptimal exam and c-spine X-rays were grossly negative." The claimant subsequently saw his own doctor who he testified took him off of work.

The carrier presented evidence that indicated that the claimant was not on his post at the time of the break-in. This consisted of a statement from a supervisor who attempted to reach the claimant by radio and phone earlier in the evening and was not successful and a statement from a co-worker that after the claimant came on duty and relieved him, he went back to the building and over a two hour period was not able to find the claimant and the claimant's car was not there. This co-worker also stated that the next day he talked to the claimant on the phone and asked him what happened. According to the co-worker, he told the claimant that he knew he, the claimant, was not there because he had tried to find the claimant. At that point, the claimant told him that he, the claimant, came back to the store about an hour before his shift was over and found the roof broken-in. In addition, there appeared to be some inconsistencies in the claimant's version of the details of what

happened on the evening of (date of injury). And, he testified that others were lying and that he was injured by the perpetrators of the break-in and that there were inaccuracies in the police report.

We have reviewed the complete evidence and all the testimony in this case (only briefly outlined above) and conclude that it is clearly sufficient to support the hearing officer's determinations. As the fact finder, she is charged with resolving conflicts and inconsistencies in the evidence and testimony. Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ); Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. The hearing officer can believe all, part, or none of the testimony of any given witness (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)) and the testimony of a claimant, an interested witness, only raises an issue of fact for the hearing officer. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Only if we were to determine, which we do not in this case, that the findings of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would we have a sound basis to disturb the decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge