APPEAL NO. 931086

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On October 22, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent (claimant) was injured in the course and scope of employment on (date of injury). Appellant (carrier) asserts that there is no evidence to support the decision of the hearing officer and, in the alternative, that there is insufficient evidence to support the decision of the hearing officer. Claimant replies that the decision of the hearing officer should be upheld.

DECISION

We affirm.

Claimant worked for (employer) on (date of injury), the date on which claimant states she was injured in the course and scope of employment. She was a pipefitter working at a refinery at (city), Texas. She testified that she maintained her home in (city), Texas, but always lived temporarily near whatever job site she was on for employer. Carrier questioned the venue of the hearing at (city) since (city) was closer to (city). The hearing officer noted that claimant ceased working for employer soon after (date of injury) and lived in (city) (closer to (city)) at the time of the hearing. Good cause was found for having the hearing in (city), and carrier's appeal did not raise venue as an issue.

Claimant testified that on (date of injury), while two cranes were moving a long pipe on a pipe rack, she was using a crowbar to keep the pipe from sliding out of the rack. She stated that one of the cranes moved too fast and (presumably placed force on the crowbar) "it went too fast on me and I just twisted my wrist or my arm real bad and dropped the crowbar." She also characterized the incident as an effort to move the pipe a short distance with the aid of crowbars as the cranes lifted the pipe--one of the cranes then dropped the pipe too fast. She added that (FG), her supervisor, (BJ), and (LS) were present and saw the incident; she also told FG what happened. She said that (JS), the safety representative, was not present.

Claimant said her left wrist was hurt. She talked to JS who made an appointment for her to see (Dr. H) on November 12, 1992. Claimant had seen Dr. H before. She had injured her left wrist on (date), also while working for employer, when she used her left hand to stop a door that was closing quickly in the wind. The carrier contended that claimant sustained no injury on (date of injury), but rather that her wrist started hurting from the injury of (date).

The Employee Incident Report prepared by claimant on (date), merely indicates that her wrist "hurt on my previous job . . . started to give me problems again." She indicated that she wanted to see a doctor. Claimant testified that JS told her to write her statement that way so it would not appear as if there had been another injury on the job. JS, when he testified, said, "I did not tell her word for word what to put down." JS also said that claimant told him she woke up with her wrist hurting and said nothing of an incident.

Carrier offered Dr. H's progress notes from the (date) injury, which include a physical exam and plan for treatment. The only "medical" document introduced by either party in regard to claimant's November allegation is a prescription form of Dr. H with claimant's name on it, dated November 12, 1992, with the words, "light duty only" being the extent of the information provided; the form is signed by a person with "LVN" (or similar initials) after the name, not "MD." At this point it seems appropriate to mention that JS provided an incident report dated November 13, 1992, which carrier provided as an exhibit at the hearing. That report indicated, "Dr. H verbally said the original injury did not heal properly. X-rays were taken of wrist area, a wrist bone according to Dr. H was out of place. Dr. H put her on light duty and put a cast on the wrist area."

A written, signed, but not sworn statement of FG, dated February 16, 1993, was provided at the hearing by the carrier. It said that claimant in mid-November complained of her wrist hurting and swelling. He stated that he sent claimant to JS who "took her to Dr. H." FG repeated what JS said as to what Dr. H said about the past injury not healing. No evidence was provided by either party from BJ or LS.

Claimant stated that since seeing Dr. H, she has seen (Dr. Hz) and (Dr. M). She had surgery on her wrist on August 25, 1993, but did not say what the procedure was or who the doctor was that performed it; no medical records were provided as to the surgery.

In determining a factual question of injury the hearing officer can believe the claimant's recitation of events and base a finding of injury on that evidence. *See* Texas Workers' Compensation Commission Appeal No 92167, dated June 11, 1992. The testimony of the claimant is "some evidence" so that the assertion of error based on "no evidence" is without merit. On an issue of fact, the Appeals Panel will not reverse the finding of the hearing officer unless the finding is against the great weight and preponderance of the evidence. *See* Texas Workers' Compensation Commission Appeal No 93372, dated June 30, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. Contrary to the carrier's contention, the evidence in this case, while conflicting, would support a decision for either party, since the great weight of the evidence can not be said to reside on either side of this controversy. The findings and conclusions are sufficiently supported by the evidence. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge