APPEAL NO. 93114

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on January 8, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) did not sustain an injury which arose out of and in the course and scope of employment and, therefore, was not entitled to benefits under the 1989 Act. Appellant asserts that she did not get a fair hearing as there were lies in a witness statement and because the hearing officer apparently did not give sufficient consideration to the doctor's evidence. Respondent (carrier) asks that the decision of the hearing officer be affirmed, pointing out that the claimant's position on the witness statement was fully set forth at the hearing and that all the medical evidence as well as the testimony of the claimant was before the hearing officer.

DECISION

Finding the evidence before the hearing officer sufficient to support his determinations, the decision is affirmed.

The evidence in this case is fairly and adequately set forth in the hearing officer's Decision and Order and will only be briefly summarized herein. Claimant asserts she sustained injuries to her hand or wrist, knee and neck when she fell to a sitting position on her buttocks as she was pulling a weed. She testified that she told her employer about the fall that same day but did not mention any injury. The employer denies any such notification or conversation by the claimant. A witness who lived and worked with the claimant testified he saw her fall and, contrary to what the claimant stated, heard her tell the employer that she was injured and that her wrist was hurting. The claimant worked the rest of that day and also the following day, although she states she was in pain and that she has not been able to work since because of the injury. The claimant and her witness had both apparently been contemplating quitting and decided not to go to work for the employer on the next day, a Saturday, and neither have been back to work for that employer. An affidavit, admitted into evidence from an individual in the farming business and who is acquainted with the claimant, indicated that sometime after the claimant stopped working for the employer, she had sought employment for herself and her "husband" and that she never mentioned an injury.

The claimant did not go to her doctor for almost two weeks following the (date of injury) incident and that was when she had an appointment that had been scheduled before (date of injury). Medical records from the claimant's doctor indicated that she had been examined and treated on February 20, 1990, for an injury she sustained "in August 1989" when working for another employer. That report indicated she "states she has pain in the middle of her back with pain and numbness in her left foot and leg." The report goes on to note that she "has broken her right wrist." A report of this same doctor dated December 15, 1992 indicates that the claimant's medical problem with her right hand, right wrist, neck, back and left knee "has existed since August, 1989." Medical records dated October 22,

1992, from another doctor who saw the claimant indicates "right hand looks grossly normal," that her neck had "no gross deformity" and her "left knee looks normal." X-ray reports indicated claimant's "cervical spine is intact and radiographically normal" and that there was no evidence of fracture or dislocation of the claimant's right hand.

Credibility was no doubt a great factor in this case and it is apparent the hearing officer did not give total credence to the testimony of the claimant, particularly in view of the conflicting evidence before him. The 1989 Act clearly provides that 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). A hearing officer may well believe all, part or none of the testimony of any particular witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). We have repeatedly held that there is no sound basis to disturb the decision of a hearing officer unless his or her determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. See Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992; Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. After a review of all the evidence before the hearing officer, we do not find that to be the situation here. To the contrary, given the evidence, including the various medical reports, which conflicts with or raises doubts about the particulars of the claimant's testimony concerning her claimed injury on (date of injury), we conclude there was clearly sufficient evidence to support the findings and conclusions of the hearing officer. Accordingly we affirm his decision.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge