APPEAL NO. 93276

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 March 18, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) had failed to establish by a preponderance of the evidence that she slipped and fell at work, resulting in a compensable injury to any part of her body while at her place of employment. Claimant urges that she did sustain a compensable injury on "date of injury" and that a witness who saw her right after the fall proved it. The respondent (carrier/employer) argues that there is sufficient evidence to support the decision of the hearing officer.

DECISION

There is sufficient evidence of record to support the decision of the hearing officer, accordingly the case is affirmed.

The single issue in the case was whether the claimant sustained an injury in the course and scope of her employment. The evidence established that the claimant was at her place of employment on (date of injury), having been called in early by her supervisor for purposes of administering disciplinary action. She stated that she arrived early and sat in her car for a period of time and then went into the employer's building. She was talking with a coworker, (CG), when her supervisor came out of his officer and told her to come on in. She states at that point she went back outside to her car to get her purse, keys and some trash she left on the front seat. She came back into the building and says she talked to CG, who was in the activities room, for about five or ten minutes and then walked past where CG had been standing to throw her trash away. In the meantime, CG had left the immediate vicinity with some laundry. Claimant testified that as she walked to the supervisor's office she slipped and fell injuring her back. She stated that although she had not noticed it, there was some water on the floor from the washing machine and that she had walked through it and slipped on a dry area of the floor. There was no commotion, noise or other sound from the fall but CG saw her on the floor and asked if she was all right to which the claimant responded "yes." She immediately got an accident report form, went into the supervisor's office and began filling it out, apparently as the supervisor was advising her that she was being suspended for improper handling of a patient. There was evidence that the claimant had had a prior injury to her back and had a laminectomy, discectomy and spinal fusion. She went to a doctor on (date of injury) with complaints of lower back pain. The doctor's report indicated that claimant was basically within normal limits on the various examinations performed and an x-ray of the lumbar spine revealed a solid fusion at L4-S1. The report states that in the doctor's opinion, "this patient has recurrent disc at L4-5" and that she was advised to rest, take physical therapy and return in three weeks for further evaluation.

CG testified that she did not actually see the claimant fall but that she described the fall to the supervisor as the most graceful fall she had ever seen. CG also testified that

although the washing machine did leak right at the machine, she did not see any water on the floor at the time of the fall, and that there were blankets on the floor near the washing machine. She also said that the claimant had a glass of water in her hand at the time of the fall and still had it in her hand when she was observed on the floor by CG. CG also stated that she offered to take the claimant's trash and put it in the trash container which she was near at the time, but that the claimant refused. There also was a trash container just outside the supervisor's office.

The supervisor testified that when the claimant finally came into his office she had a fast food drink container in her hand and was carrying a form. He stated she did not pay much attention while he informed her of the suspension letter but continued filling out the form. She did not mention anything about falling but when he asked her "what happened," the claimant said to ask CG. He subsequently asked CG to prepare a written statement.

Clearly, this case principally involved the hearing officer's assessment of the claimant's credibility. And, the burden to establish that an injury occurred in the course and scope of employment is on the claimant. Martinez v. Travelers Insurance Company, 543 S.W.2d 911 (Tex. Civ. App.-Waco 1976, no writ). As 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)), the hearing officer could determine that the claimant was not believable in her description of the events on (date of injury). An interested party's testimony does no more than raise a fact issue for the fact finder. *See* Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ); Texas Workers' Compensation Commission Appeal No. 91070, decided December 19, 1991. When presented with conflicting evidence, as was the situation in this case, the hearing officer, as the fact finder, may believe one witness and disbelieve others, and may resolve inconsistencies in the testimony of any witness. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986); Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The somewhat peculiar actions of the claimant on the day in question leading up to her entering the supervisor's office, the knowledge she had that disciplinary action was about to be taken, which she recognized might be termination (she was aware another employee had been terminated for similar reasons), together with testimony of CG which conflicted significantly with that of the claimant and tended to show that an injurious fall had not taken place, formed a sufficient basis for the hearing officer to conclude that the claimant did not sustain an injury in the course and scope of her employment. Where there is sufficient evidence, as there is here, to support the hearing

officer's decision and the decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no 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

Lynda H. Nesenholtz
Appeals Judge