APPEAL NO. 93289

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 17, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) had sustained an injury in the course and scope of his employment on or about (date of injury). The appellant (carrier) urges that the great weight and preponderance of the evidence is against the hearing officer's determination and asks that the decision be reversed and a new one rendered that claimant failed to establish a compensable claim. Claimant argues that the evidence is sufficient to support the hearing officer's findings and conclusions and requests that the decision be affirmed.

DECISION

Determining that there is sufficient evidence to support the findings and conclusions of the hearing officer and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, the decision is affirmed.

The single issue in the case was whether the claimant sustained an injury in the course and scope of his employment on or about (date of injury). The claimant worked on an oil rig as part of a drilling crew and testified that he was injured in the late evening hours of September 16 or early morning hours of (date of injury). As the crew was "tripping pipe" going back into the hole, the claimant was handling a pair of tongs, which did not bite, slipped on the drill pipe, and caused him to be jerked and pulled, injuring his back, neck, right arm, and hand. He stated that although he was in some pain he did not think it was serious at that time and only involved a pulled muscle, that he did not report an injury to anyone although he did mention the matter to two other workers on the site, that he completed his shift, that he signed a checkout log indicating he had not sustained any injury or witnessed any injury during the shift, and that he went home at 6 a.m. when the shift ended. He testified that he went to bed and woke up at about noon and was in severe pain. He went to an emergency room (ER) where he was diagnosed with an acute back and neck strain and was referred to an orthopedic specialist with whom he is still treating. Because of a dispute on workers' compensation coverage, his mother had to borrow money (subsequently reimbursed) to enable him to go to the orthopedic specialist. An MRI and EMG were subsequently performed and were basically negative. He was also referred to a neurologist who indicated the claimant had a "cervical lumbosacral sprain." The claimant testified he has not been able to work since the date of injury. The claimant thinks the reason that coworkers deny that he mentioned anything to them or that they observed any type of incident was because of safety bonuses they wanted to get.

The claimant's wife testified about how the claimant has suffered serious pain since the 17th of September, that he did not have any back problem prior to that time, that he has not been able to work, and that the claimant's condition has had a profoundly negative effect on the claimant and the family. Her testimony tends to corroborate the claimant's testimony concerning the events beginning at about noontime on the 17th and subsequently.

The carrier introduced testimony and statements from other workers who indicated they did not see any incident resulting in the claimant being injured and denied that claimant had mentioned anything about being jerked or pulled by the tongs. One of the workers did indicate that if the tongs did not bite and were held on to it would jerk or pull the individual. The carrier also introduced shift logs that employees sign when leaving a shift and which the claimant signed for the period in issue, stating that "I did not have an accident or injury and that I did not observe an accident or injury during the last 12 hours." The claimant acknowledged signing the log but stated he did so thinking the incident was not serious until he woke up about noon that morning.

Without doubt, the evidence in this case was conflicting in significant part. And, there was some inconsistency in the claimant's testimony. However, resolving conflicts and inconsistencies in the evidence and testimony is the function and responsibility of the fact finder. Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ); McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex 1986). In Highlands Insurance Company v. Baugh, 605 S.W.2d 314, 316 (Tex. Civ. App.-Eastland 1980, no writ), the claimant testified that she injured her back while working on an oil rig. Other members of the drilling rig crew did not see claimant injured. Concerning the jury's finding in favor of the claimant based on her testimony, the court stated:

> She is, of course, an interested witness and her testimony does no more than raise a fact issue for the jury. [citation omitted]. Nevertheless, the jury had a right to believe her testimony, and believing it, has a right to find that she did suffer an injury while employed on the oil rig. [citations omitted].

The claimant here has been consistent in stating the essential circumstances surrounding his injury on the late evening of September 16th or early morning hours of September 17th, that he thought it was not particularly serious at the time and that it was only when he woke up about noon on the 17th that he realized it required medical attention. He went to an emergency room, and although his back condition and medical diagnosis of acute back and neck strain is principally based upon subjective criteria, his debilitating condition and continuing back pain is corroborated by his wife's testimony. The hearing officer, the sole judge of the relevance and materiality of the evidence and of its weight and credibility (Article 8308-6.34(e)) apparently, after seeing and hearing the claimant testify, chose to believe him even though there was certainly conflicting evidence. We can not say there was not sufficient evidence to support his factual determinations. That different inferences might be drawn from the evidence or different conclusions reached is not a sufficient basis to disturb the hearing officer's decision. *See* Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e).

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge