APPEAL NO. 93527

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). On May 27, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine the issue of whether the claimant, FJ, who is the appellant in this case, gave timely notice of his injury to his employer,(employer), and whether he sustained disability as a result of that injury. The injury was alleged to have occurred on (date of injury).

The hearing officer determined that claimant did not give timely notice and did not have disability from his alleged work related injury.

The claimant has appealed the notice findings of this decision, arguing that he did report his injury to one supervisor the day it occurred. The carrier responds by asking that the decision be affirmed.

DECISION

The decision of the hearing officer is affirmed.

The claimant contended that he was injured on (date) (later, he said that date of injury was (date)), 1992, when he was asked to perform a task that he had never done before. He was asked to assist on a line packing "cornerposts," which he described as 12 feet long posts that he lifted three at a time in a bundle he estimated weighed 25-30 pounds. He stated that he was asked to work at this task around 10:00 a.m., and hurt his hand around 10:30 a.m.. Claimant testified that he "hollered at" the line supervisor, (Mr. G), and told him he hurt his hand, but did not explain how. Claimant stated that Mr. G told him to fill out an accident report when he got off work. Claimant stated that he got off around noon but never got around to filling out a report.

Claimant stated that night that as he tried to break up a dispute between his wife and sister-in-law, he was stabbed in the back, and missed work for a day. He stated that when he returned on August 6th, he was terminated. He stated that that morning he attempted to tell (Ms. F), the human resources manager, about his injury
but didn't get around to it because of a heated discussion with her about his attendance.

The claimant said that he returned to work to pick up his paycheck on August 14th, and got into a heated discussion with (Mr. D), another supervisor, about his termination. He stated that he did mention his injury during this conversation. The claimant testified he had not worked since his termination, and that he could not work as of the date of the hearing.

Claimant did not seek medical treatment for his work-related injury until October 10, 1992. A medical report from (Dr. L), dated November 9, 1992, recited a history of the injury as involving repetitive motion for a period from 7:00 a.m. until 10:00 a.m. on the date in

question, and recorded a diagnosis of low grade nerve irritation and denervation consistent with early carpal tunnel syndrome.

Ms. F testified that the first notice she received that claimant contended a work-related injury was (date), and that she began investigating the claim at this time. She indicated that supervisors were evaluated in part based upon their prompt reporting of work-related injuries. Ms. F indicated that the reason for claimant's termination was excessive absences in the four month period he worked for the employer. She denied their discussion was heated.

Mr. D stated that the only injury that claimant mentioned when he came in to get his paycheck was his stab wound, which he claimed was the cause of missed work, and that he felt his termination was unfair. Mr. G stated that claimant never reported that he was hurt the day he claimed, and that, if he had, an accident report would have been filled out promptly under his supervision. He stated that claimant's work on the line would not have been strenuous, and that the cornerposts in question were about 10 feet long and weighed about 2½ pounds each. Mr. G and Mr. D did not hear that a work-related injury was claimed until October 1992.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Article 8308-6.34(e). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The burden is on the claimant to prove, by a preponderance of the evidence, that an injury occurred within the course and scope of employment. Texas Employers' Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole.

After review of the record, we affirm the hearing officer's decision.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge