APPEAL NO. 93599

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 June 15, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine the issues of whether the claimant, JM, sustained an injury in the course and scope of his employment with (employer) on (date of injury), whether he gave timely notice of his injury to his employer, and whether he sustained disability as a result of a compensable injury.

The hearing officer determined that claimant did not prove, by a preponderance of the evidence, that he sustained a compensable hernia on (date of injury), did not give timely notice, did not have disability from his alleged injury.

The claimant has appealed 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, who worked as a pipefitter for the employer, contended that he was injured on (date of injury), when he lifted a generator into a truck with two of his supervisors, (Mr. P) and (Mr. D). He stated that he felt immediate burning pain in his side and groin, which he mentioned to Mr. P when they got into the truck. Claimant contended he had about seven conversations with Mr. P over the following weeks, and that Mr. P said he would report the incident.

The claimant stated that he estimated that the generator weighed about 750 lbs, although he later made clear that he did not know for sure how much it weighed. He stated that it generally took four people to lift a generator.

Claimant stated he went to the doctor on May 17th, and was ordered to be put on light duty. He stated that he reported this incident around that time to persons in the "front" office because he had to get permission to see the doctor. The employer assigned claimant to light duty. He stated he was laid off in July 1991, and worked in remodelling work with his brother until he was again employed as a pipefitter about a month before the contested case hearing. Claimant also stated that he drew unemployment benefits for about three to four months. Claimant stated that he was a jogger but never lifted weights, and had not injured himself while jogging.

Transcribed telephone interviews from numerous people were submitted by the carrier without objection. Carrier's assertion at the hearing that Mr. P was not a supervisor or manager is refuted in several of those interviews, as well as by live testimony from

carrier's witness. Therefore, the hearing officer's determination on the notice issue involved reconciling disputed evidence between claimant and Mr. P.

Mr. P's transcribed statement was signed and sworn to as true in content and as an accurate transcription. Basically, Mr. P's statement stated that the first claimant reported an incident, and attributed it to the generator lifting incident, was about a month before the June 3, 1991 interview. He stated that he observed claimant working without difficulty in the time period after they lifted the generator.

Mr. D's sworn statement indicated that he first knew of claimant's injury about two weeks before his June 3, 1991 interview. A supervisor's report of accident was completed by the employer on May 20, 1991.

Medical records from (Dr. M), identified by claimant as a surgeon, indicated the presence of a right inguinal hernia as of June 1991. The claimant submitted two signed, unsworn statements from coworkers that claimant complained of abdominal or stomach pain in March 1991.

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). A report of injury must be made to a person holding a supervisory or management position with the employer, not later than 30 days after an injury that is not an occupational disease occurs. Article 8308-5.01(a) and (c). There are conflicts in this 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:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge