APPEAL NO. 93690

At a contested case hearing held in (city), Texas, on April 15 and June 8, 1993, the record having been closed on July 9, 1993, the hearing officer, (hearing officer), found that the respondent (claimant) sustained damage to his right wrist in the course and scope of his employment by (employer) and concluded that on that date claimant sustained a compensable right wrist injury pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). Appellant (carrier) asserts that this finding and conclusion are against the great weight of the evidence, pointing to photographic and testimonial evidence to the effect that the handles of the pushcart claimant was pushing at work are so set in from the sides of the cart that claimant's wrist could not have contacted the gate post as he was pushing the cart through at the time of his alleged injury. Carrier also attacks claimant's credibility, asserting that his alleged injury did not occur until after he became aware he was to be laid off. In his response, claimant seeks affirmance.

DECISION

Finding the evidence sufficient, we affirm.

Claimant was hired by employer in January 1992, and employer's manager, (Mr. M), testified claimant and a number of others were hired as seasonal workers on a week to week basis. Claimant testified through a translator that on (date of injury), while pushing a cart through a partially closed gate in employer's yard, his right wrist struck an iron gate post and was injured. The next day he stated he reported the injury to a supervisor, (Mr. J), and was provided with an icepack and a gauze bandage. The accident was apparently unwitnessed. The chain link gate opened and closed by sliding to the side. On (date), claimant saw (Dr. M), gave a history of injuring his right wrist pushing the cart and hitting a "sliding door," was diagnosed with right wrist sprain, was provided with medications, and was placed in therapy. The physical therapist's notes of September 25th recounted that claimant's hand was accidentally caught between the gate and the cart and forcibly bent resulting in pain and swelling over the dorsal aspect of the right hand and wrist. The therapist observed "moderate swelling and minimal hematoma over the dorsal aspect of the right hand and wrist."

Mr. M testified that in his opinion the accident could not have happened as claimant described because the pushcart handles were set in from its sides to the extent that the side of the cart would have struck the gate post instead of the handle with claimant's hand on it. (Mr. S), another supervisor, testified to the same opinion. The carrier's position was that claimant's accident was not physically possible unless he twisted or turned the cart over and that claimant's credibility was wanting. In this regard, the carrier established that while claimant's January 3, 1992, employment application denied prior job related injuries and workers' compensation claims, he had two prior claims, one for his shoulder and another for a broken left hand and wrist, both of which he settled. Claimant's explanation was that a friend helped him complete the application. Mr. M said that claimant told coworkers he had prior compensation settlements and "would do the same here." Mr. M further stated that

claimant had been advised before the injury that he was to be laid off effective the following Monday. The carrier also produced evidence that claimant was frequently seen to have a bandage on his right wrist before the injury although the evidence was in conflict as to whether such bandages were on his right wrist or the left wrist which had been previously injured.

While different inferences might reasonably be drawn from the evidence, such is not a sufficient basis to reverse a decision where there is some probative evidence sufficient to sustain a decision (Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992). We are satisfied the evidence is sufficient to support the challenged finding and conclusion. The hearing officer could accept claimant's testimony and credit the corroboration of a right wrist injury in the medical records. Section 410.165(a) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of the weight and credibility it is to be given. Claimant had the burden to prove by a preponderance of the evidence that he sustained an injury or injuries in the course and scope of his employment. Johnson v. Employer Reinsurance Corporation, 351 S.W.2d 936, 939 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer may believe all, part, or none of the testimony of any one witness, including claimant, and may give credence to testimony even where there are some discrepancies. Taylor v. Lewis, 553 S.W. 2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). As the trier of fact, it was for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W. 2d 701 (Tex. Civ. App.-Amarillo 1974, no writ.). We will not substitute our judgment for that of the hearing officer where, as here, the findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865, 868 (Tex. App.-Texarkana 1989, no writ). The challenged findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re Kings' Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision of the hearing officer is affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge