APPEAL NO. 93741

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.011 *et seq*. (1989 Act). On July 14, 1993, a contested case hearing was held in (city), Texas, before hearing officer (hearing officer). The appellant, hereinafter claimant, appeals the hearing officer's determination that the claimant was not injured in the course and scope of his employment on (date of injury), and that he has not suffered disability as a result of the alleged injury. The respondent, hereinafter carrier, contends that the hearing officer's decision is supported by the evidence and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The claimant stated he was working for (employer) on a drilling rig in (state) in the early morning hours of (date of injury), when a thirty foot long piece of pipe rolled off a machine and struck him on the shoulder and left side. The claimant said he immediately told his supervisor, (Mr. P) what had happened, but said he was not hurt. He continued to work the rest of his shift, until 7:30 a.m., and then went home. He said he began feeling bad, and went to an emergency room where he was referred to (Dr. B); however, he was told Dr. B could not treat him because Mr. P had not reported the injury to employer. He said he then went to Mr. P's house to tell him he needed to see a doctor, and was subsequently seen by Dr. B.

(Mr. N), employer's toolpusher who supervised both claimant and Mr. P, said claimant had missed two days of work in March 1993, and had been warned that he would be fired if it happened again. He said claimant had failed to show up for his shift beginning the evening of (date of injury), and was terminated the following day.

Mr. P testified that he and claimant were the only two workers on the shift beginning the evening of (date), that he was unaware of any accident and that claimant did not report one to him, and that he believed a falling pipe such as claimant described would have made noise and would have caused a lot of damage. He also stated that claimant had missed work in the past because of an alleged need to go to (state) to be with an ailing parent. He said that during the day on (date of injury), when he dropped off claimant's check at his house, claimant was lying under his van working on it, in no apparent distress. That afternoon Mr. P said claimant's wife came to his house and told him claimant had to be with his mother, who was ill; Mr. P said he returned to claimant's house to tell him he had to report to work or he would be fired. He said claimant later came by his house and told him he would meet him at work, but that he never showed up. This was reported to Mr. N, who told Mr. P to terminate claimant.

Mr. P said that on (date) claimant's daughter came to his house to say that her father would be able to return to work; Mr. P said his wife told her that claimant had been fired. On (date), Mr. P said claimant came to his house with some medical papers for Mr. P to sign. He said that he subsequently called the hospital, which was the first time he learned claimant

was contending he was injured. Claimant denied he knew he was terminated at the time he sought medical treatment.

Mr. P's wife also testified to essentially the same facts.

Claimant, who testified that he continued to experience pain at the time of the hearing, presented an April 30, 1993, report from (Dr. D). That report described an incident in which claimant was struck on the back by a falling pipe, and said claimant had pain from his neck to his tailbone. (While the report indicated x-rays were taken, it did not state the results.) Dr. D diagnosed cervicalgia and lumbosacral and thoracic sprain/strain, and took claimant off work for an indefinite period. The claimant testified at the time of the hearing that he did not believe he would be able to return to oil field work, and that he was doing odd jobs such as yard work.

The hearing officer summarized the evidence and made clear that the deciding factor in this case was credibility. The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). As trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). He is privileged to believe all, part, or none of the testimony of any one witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). Further, he is not compelled to accept the testimony of the claimant as an interested witness. Lopez v. Associated Employers Insurance Company, 330 S.W.2d 522 (Tex. Civ. App.-San Antonio 1960, writ ref'd). We will set aside the hearing officer's decision only if it is so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. Pool v. Ford Motor Company, 751 S.W.2d 629 (Tex. 1986). Our review of the evidence does not convince us that this should be done in this case.

Accordingly, the decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge