APPEAL NO. 93830

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S. Article 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on August 10, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) was not injured at work on (date of injury), and did not suffer disability. Claimant appeals urging that he was injured at work and disputes the testimony and evidence offered by the respondent (carrier). Carrier asks that the decision be affirmed citing sufficient evidence to support the hearing officer.

DECISION

Finding the evidence sufficient to support the findings and conclusion of the hearing officer, the decision is affirmed.

The only two issues in the case were whether the claimant was injured in the course and scope of his employment and, if so, whether he had disability. Very briefly, the claimant had a rather stormy relationship on the job, at least during the last couple of years. In any event, a written reprimand was to be given to the claimant and he refused to go to the second level supervisor's office. Both the second level supervisor and the first level supervisor (two supervisors needed because of indications the claimant would not sign acknowledging the reprimand) finally determined that they would have to go to the claimant's office to serve the reprimand. They did so on (date of injury). The claimant was very uncooperative and agitated and threatened to call 911. According to the claimant he decided to leave his office when the supervisors refused to leave and got up and reached for the door knob. The claimant's office was a small area and he claims his hand was brushed off the door knob by the second level supervisor who was standing at the door. Being in a crouched position the claimant stated that he fell back against his desk and injured his back. The two supervisors testified and gave a completely different version of the events leading up to (date of injury) and stated that at no time did the claimant fall, hit a desk or in any way injure himself. Neither was aware he was claiming an injury until sometime later. The claimant was ultimately terminated from his employment.

Without question, the outcome of the case hinged on the credibility of the witnesses and an evaluation of the surrounding circumstances. Of course, the hearing officer is in the best position to evaluate and sift through conflicts and inconsistencies, as there was in this case, in the testimony and other evidence. *See* Garza v. Commercial Insurance Company of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Section 410.165(a) specifically provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. We have reviewed the entire record and find abundant evidence that sufficiently supports the determinations of the hearing officer. *See* Texas Workers' Compensation Commission Appeal No. 91077, decided December 19, 1991. The evidence contrary to his findings and conclusions is far from the great weight and preponderance of the evidence necessary to render his determinations clearly wrong or

manifestly unjust. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge