

## APPEAL NO. 93881

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Art 8308-1.01 *et seq.*), a contested case hearing was held in (city), Texas, on August 23, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) did not sustain an injury in the course and scope of his employment and was not entitled to benefits under the 1989 Act. Claimant appeals urging that he provided evidence to prove he was injured on the job. Respondent (carrier) asks that the decision be affirmed citing sufficient evidence to support the hearing officer findings and conclusions.

### DECISION

Determining there is sufficient evidence to support the finding and conclusions of the hearing officer, the decision is affirmed.

The Decision and Order of the hearing officer fairly and thoroughly sets forth the evidence in the case and is adopted for purposes of this decision. Very briefly, the claimant asserts he injured his knee when he slipped on some water on the floor at his place of employment where he performed duties as a busboy. He subsequently had surgery for a torn meniscus and was off work for several months. No one saw him fall, however, a waiter heard a commotion and came upon the claimant who was on the floor. The claimant ask the waiter to go get the maitre'd. The claimant acknowledged that he had hurt his knee in a softball game several weeks before the incident at work. No x-rays had been taken of the claimant's knee prior to the incident at work. The carrier called a number of witnesses who provided testimony that the claimant had been off work because he hurt his knee playing softball and that he had returned to work four days before the incident at work. They also testified that the claimant had, prior to the fall, inquired about insurance coverage and whether the employer would cover medical expenses. He was advised by the manager that his health insurance was not in effect yet as he had not worked for the employer long enough and that workers' compensation only applied to injuries at work. There was also testimony that there were no skid marks where the claimant asserts he slipped in water and fell, and that although there was a small puddle of water that appeared to have been spilled in the area where claimant was observed on the floor, the water had not been disturbed and showed no signed of anyone stepping in it or slipping through it.

Clearly, this case hinged on credibility. And, it is apparent that the hearing officer did not accept the claimant's version of events. Under the 1989 Act, 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. Section 410.165(a). As the fact finder, he resolves conflicts and inconsistencies in the evidence and testimony. Garza v. Commercial Insurance Co. of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ), A claimant's testimony is that of an interested party and it only raises issues of fact for the fact finder. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ.) The hearing officer, as the fact finder, can believe all, part or none of the testimony of a given witness and may believe one witness and disbelieve others. Cobb v.

Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)

Only were we to determine, which we do not, that the findings and conclusions of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would we have a sound basis to disturb his decision. As stated, the hearing officer could properly discount the claimant's testimony concerning the alleged slip and fall, particularly in view of the testimony of the other witnesses. We conclude there was sufficient evidence before him support his decision. Accordingly, the decision is affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge