APPEAL NO. 93882

On August 26, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held 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*.). The issue at the hearing was whether the appellant (claimant) was injured in the course and scope of his employment. The hearing officer determined that the claimant was not injured in the course and scope of his employment and decided that the claimant is not entitled to workers' compensation benefits. The claimant disputes the hearing officer's decision and requests that it be reversed.

DECISION

The decision of the hearing officer is affirmed.

The claimant works at a high school as a special education counselor for the employer, a self-insured political subdivision of this State. The claimant testified that on the morning of (date of injury), he injured his back pulling a dolly with two boxes on it up the steps of the school and that later that morning, after a meeting where he was threatened by the special education supervisor regarding a missing document in a student's folder, he felt worse back pain and was helped to the floor by the school principal and was then taken by emergency medical services (EMS) to a hospital. The claimant said he told the school principal about the dolly incident when he was helped to the floor. A coworker gave a statement that he saw the claimant using a dolly on the morning of (date of injury). The claimant's wife said that she was called to the school on (date of injury), and told that the claimant had been taken to the hospital. The claimant said that due to his back injury he missed the last week of the school year and had physical therapy three times a week during the summer of 1991 when he was not working. He said he returned to work on light duty status at the end of August 1991.

Those in attendance at the meeting testified that when the special education supervisor told the claimant that if he did not produce the missing document, the special education director would personally come to the school and get it from him, the claimant stated to the effect that that comment caused him stress and the stress caused him pain or injury. These witnesses indicated that the claimant did not mention having hurt his back pulling a dolly earlier the same day. The principal testified that as he and the claimant were walking down the hall to the claimant's office to find the missing document after the meeting, the claimant said he was in pain and asked the principal to lower him to the floor which the principal did. The principal said the claimant did not mention anything about an injury from pulling a dolly and that it was not until later that afternoon that he was informed about the dolly incident by the claimant's wife.

A hospital emergency room report described the history of the present illness as an acute episode of severe low back pain while working at school after lifting 100 to 125 pounds

that were loaded on a dolly. An MRI scan done on (date of injury), revealed a soft disc herniation at the L5-S1 level and a "bulging anulus" at the L4-L5 level. However, the report stated that the overall appearance of these two disc levels was unchanged from a CAT scan done in January 1990. The claimant said he had previously suffered back pain in 1990. The claimant's treating doctor gave a written statement to the effect that he had no doubt that all of the claimant's conditions, including the bulging disc and herniated disc, were caused by "incidents that occurred during work hours."

Pursuant to Section 410.165(a), the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. The hearing officer indicated in her decision that she found that the evidence presented by the claimant was less credible than that adduced by the employer and further found that the claimant did not injure his back or aggravate a pre-existing condition when he used the dolly on (date of injury). The hearing officer concluded that the claimant was not injured in the course and scope of his employment.

As the fact finder, the hearing officer 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 to determine. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). The hearing officer may believe all, part, or none of the testimony of any 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.). In a workers' compensation case, the fact finder is not bound by the testimony of a medical witness when the credibility of his or her testimony is manifestly dependent upon the credibility of the information imparted to the witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1973, writ ref'd n.r.e.).

Only were we to determine, which we do not in this case, that the findings and conclusions of the hearing officer are 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 the hearing officer's decision. We conclude there was sufficient evidence to support the hearing officer's decision and that the decision is not against the great weight and preponderance of the evidence. *See* Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Griffin v. New York Underwriters Insurance Company, 594 S.W.2d 212 (Tex. Civ. App.-Waco 1980, no writ). We further conclude that there is no merit in the claimant's assertion that the hearing officer's findings are in conflict.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge