

APPEAL NO. 93896

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 24, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) sustained a work related back injury on (date of injury), that the claimant did not timely report such injury and that she had sustained disability for a period of time following the injury and up to her return to work. The claimant appeals the hearing officer's determination that she failed to give timely notice and asks that the hearing officer's decision on this issue be reversed. Respondent (carrier), a self-insured governmental subdivision, urges that there is sufficient evidence to support the hearing officer's determination on the timely notice issue and asks that the decision be affirmed.

DECISION

Finding the evidence sufficient to support the decision of the hearing officer, we affirm.

The evidence in this case is fairly and adequately set out in the Decision and Order of the hearing officer and is adopted for purposes of this decision. Briefly, the claimant apparently sustained a back injury lifting boxes in (date) and re-injured it lifting boxes on (date of injury). Although she testified that she did have leg pain and numbness in the fall of 1992, she did not experience back pain until the (date of injury) incident. However, medical evidence in the record shows she was seen in a clinic for her back on December 8, 1992, and a CAT scan showed a herniated disc at L4-5. She also stated that she notified her supervisor about the work related injury of (date of injury) on January 11, 1993, and also on January 29, 1993. A statement from the supervisor indicated that the first he was told or was aware of any job-related injury was on January 29, 1993, when the claimant filled out an Employee's Accident Report which showed a back injury date of "(date)." (During this same time frame the claimant also had and was being treated for a carpal tunnel syndrome work-related injury for which timely notice had apparently been given). The claimant filed an amended notice of injury on April 4, 1993, which amended the injury date from "(date)" to "(date of injury)." Also in evidence was the Employer's First Report of Injury (TWCC Form-1) dated February 3, 1993, which showed an injury date of "(date)." A second TWCC Form-1 (apparently based on the claimant's amended report of injury) was filed in April 1993 which showed a back injury date of "(date of injury)" and the date reported as "04-02-93."

The claimant's position was that she did give timely notice, and she did not urge or show that there was good cause for any failure to give timely notice. Section 409.001 and 409.002(2). The hearing officer indicates her evaluation of the evidence "substantiates a conclusion that the Claimant did not report to her employer a work-related back injury occurring on (date of injury), until April 2, 1993," and found that the claimant had not provided timely notice as required 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, the hearing officer resolves conflicts and inconsistencies in the evidence (Garza v.

Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and may believe all, part, or none of the testimony of any witness, including that of an interested party such as a claimant. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.); Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). 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 there be a sound basis to disturb her decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge