

APPEAL NO. 93905

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 under the provisions of 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 hearing officer determined that the appellant (claimant) was not injured in the course and scope of her employment with her employer, (employer), on (date of injury), and that the claimant failed to give her employer timely notice of her alleged injury. The hearing officer denied the claimant's claim for workers' compensation benefits.

The claimant disagrees with the hearing officer's findings of fact, conclusions of law, and decision, and requests that we reverse the decision and rule in her favor. The claimant's initial appeal was timely filed and will be considered; however, the claimant's amended appeal was not timely filed and will not be considered. See Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. The claimant enclosed numerous documents with her original appeal, some of which were made a part of the hearing record and some of which were not. Documents enclosed with the appeal which were not made a part of the hearing record will not be considered. Section 410.203(a)(1); Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992. The respondent (carrier) responds that the hearing officer's decision is supported by the evidence.

DECISION

The decision of the hearing officer is affirmed.

Having reviewed the hearing record, we conclude that the hearing officer's decision is supported by sufficient evidence and 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).

The hearing officer's Statement of the Evidence is a fair and accurate summary of the evidence, is adopted, and will not be repeated at length. Succinctly, the claimant alleges that on (date of injury), while at work she was injured when her supervisor, (Ms. F), swung a door open and hit her left arm and then lifted the claimant's chair with the claimant in it about three to four feet straight up off the floor and dropped it. The claimant weighs about 120 pounds. The claimant said she hurt her arm and back. The claimant said that soon after the incident she reported her injury to (Ms. P), the employer's director of risk management, and to (Mr. T), a manager.

Ms. F testified that on (date of injury) her purse brushed against an open office door and the door hit the back of the claimant's chair but did not touch the claimant. The door hits the chair almost every time it is opened. In addition, Ms. F testified that she did not lift the claimant's chair; what she did was move the chair around five or ten degrees. Ms. F's

testimony was largely corroborated by two witnesses who were present at the time of the incident in question. Ms. P testified that the claimant told her on (date), that she did not know if she was injured when her arm was "bumped," and Mr. T said in a written statement that on (date) the claimant "told him what happened the day before," gave him some hospital bills, but that he was not aware of any injury. He does not state what was contained in the hospital bills.

In regard to the medical records and reports in evidence, we observe that, 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, as in this case, 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.). In a medical report dated January 22, 1993, (Dr. I) diagnosed "musculoligamentous injury" of the cervical and lumbar spine, "post-traumatic fibromyalgia," and "thoracic outlet syndrome, left upper extremity." However, in a report dated April 8, 1993, Dr. I reported that the claimant had diagnostic studies and a neurological evaluation which did not show any objective evidence of any organic dysfunction, and stated "we have not come up with a specific diagnosis for patient's symptoms." Dr. I said that long-term stress management would be best for the claimant. X-rays revealed no abnormalities.

The claimant has the burden to prove that she was injured in the course and scope of her employment and also has the burden to show timely notice of injury. Johnson, supra; Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App. - El Paso 1965, no writ). The hearing officer is the judge of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer determined that the claimant was not injured in the course and scope of her employment. The hearing officer states in his decision that he did not find the claimant to be a credible witness but found the carrier's witnesses to be credible. We have no basis to disagree with his assessment.

The evidence on the issue of timely notice was conflicting and the hearing officer could appropriately resolve the conflicts in the favor of the carrier. However, if any error was made by the hearing officer in regard to the timely notice issue, it would not change our decision to affirm the hearing officer's decision because the evidence sufficiently supports the finding of no injury in the course and scope of employment. To have a compensable injury an employee must be injured in the course and scope of her employment. Section 401.011(10). We find no reversible error in this case.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge