APPEAL NO. 93934

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.) On September 30, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) was not injured on the job on (date of injury), and did not give timely notice of a work-related injury on that date. Claimant asserts his disagreement with findings of fact that there was no injury, that notice was not timely given, and that the information claimant gave employer at the time of the incident was insufficient to cause a reasonable person to decide that a new injury had been reported. Carrier replies that the hearing officer's decision should be affirmed.

DECISION

We affirm.

Claimant had worked for (employer) since 1986. He had only worked a short time, however, in the compressor assembly area. His duty was to remove chips from holes bored in crankshafts. He did not have to move the materials as they came before him unless some abnormality occurred. On (date of injury), claimant states that he hurt his back while handling a tray of parts. His back had been previously hurt in 1986, for which he had received a doctor's restricted work opinion which the employer still had on file. On (date of injury), claimant complained to the employer's nurse, (PP), that the job he was doing was not in accord with that restriction.

Claimant testified that on (date of injury), he indicated to PP and thereafter to (LR), who was his supervisor in the crankshaft machining department, that he felt pain in his back. PP testified that claimant only complained about the job not being within the restriction because it entailed too much bending; she stated that he did not say he had been hurt or injured. LR testified that claimant and he had a discussion about time cards that day in which claimant said nothing about a physical problem. LR was called by PP who pointed out the bending restriction and after their discussion a new job was found for claimant. LR said that claimant never said anything about injuring his back, while on the job, then or any time thereafter. Claimant continued to work until he ceased working for the employer on July 1, 1992.

The note which PP made on (date of injury), is consistent with her testimony. Claimant only introduced one medical exhibit, the statement of (Dr. W) dated July 21, 1993. This report gives no indication of treatment prior to the date that appears on it. Dr. W states that claimant complains of pain in the neck. While back motion is said to be "markedly limited," claimant was "neurologically normal."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He could find from claimant's own testimony that reference to pain was not sufficient to indicate that he had a work-related injury. In addition the hearing officer could conclude that claimant did not tell PP that he had any pain, of whatever basis, when

he called attention to his bending restriction. He could also question that claimant could continue to work until he ceased to be employed by employer and that medical evidence provided so little indication of prompt treatment. The findings of fact that claimant did not sustain an injury, did not timely notify the employer, and did not give

sufficient information to cause a reasonable man to conclude that he was reporting an injury are sufficiently supported by the evidence. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge