APPEAL NO. 94029
FILED FEBRUARY 16, 1994

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On October 20 and November 29, 1993, a contested case hearing was held. There were three issues to be determined: 1) whether the claimant sustained a compensable injury on (date of injury), while employed by (employer); 2) whether the claimant timely reported this injury to her employer; and 3) whether the claimant had disability as a result of a compensable injury.

The hearing officer determined that the claimant was not injured in the course and scope of her employment, that she had not timely reported the alleged injury to her employer, and that the claimant did not have disability as that term is defined by the workers' compensation act.

The claimant has appealed the decision. Although the appeal takes issue with the way that the hearing officer has set out the statement of the evidence in the decision, the appeal does not list specific findings of fact and conclusions of law that are appealed. Nevertheless, a fair reading of the appeal indicates that the claimant disagrees with the hearing officer's determination that a compensable injury did not occur on (date of injury), or that she did not timely report her injury (or had no good cause for failure to timely report), and as such is against the great weight and preponderance of the evidence. The claimant disputes that the evidence in favor of her claim consisted essentially only of her testimony, pointing out that the doctor's report recites a history of how the accident occurred. The claimant argues that there is no real inconsistency between her testimony at the contested case hearing and statements made in the course of her application for unemployment income benefits. The claimant indicates at one point in the appeal that the hearing officer's observation that there were inconsistencies in some of claimant's statements indicates a deprivation of due process. The carrier responds that an appeal directed to statements or omissions in the statement of evidence mischaracterizes the decision and does not constitute assignments of error in the decision. The carrier asks that the decision be affirmed.

DECISION

After considering the record in light of the points of error raised, we affirm the hearing officer's decision.

The claimant, who performed cleaning services for the employer, stated that she was injured on (date of injury) when she lifted a "case" of 96 toilet paper rolls. She stated that she told her supervisor, (Mr. W), who admonished her for lifting the box but otherwise did nothing. Claimant said she continued to work in pain and mentioned her injury to some coworkers. On March 5, 1992, after she was already on vacation, she consulted with (Dr. T). She saw Dr. T only once, and she said he advised her to file for workers' compensation. Claimant said Dr. T took her off work, and that same day she went back to

the office of her supervisor to give him the "off work" slip. Claimant said she was told by Mr. W's secretary, (Ms. J), that they would not need the slip. She told Mr. W she would like to remain off for a while. Claimant said that Mr. W told her she could not go on workers' compensation and should go on social security. Claimant thereafter went to (state) on her vacation.

Medical records of Dr. T, including the document described as the "off work" statement, indicated that Dr. T examined claimant on March 4th and diagnosed "lumbosacral strain and possible congestive heart failure (not related to injury)." The history of injury was listed as "lifting large boxes." He referred her to an internist "ASAP." He checked "no" under return to work. A physician report attached to this indicated that she was referred to an internist "for edema." The patient information sheet signed by claimant stated "no" in response to "is this a work injury" and listed a Travelers Insurance policy number. The history on this sheet is also given as "lifting large boxes." An affidavit from Dr. T indicated that he could not recall the condition for which he took her off work, and that she was not seen initially as a workers' compensation patient. Claimant denied both that she knew she had been diagnosed with possible congestive heart failure or that Dr. T referred her to an internist.

It was undisputed that claimant did not return to work. Claimant agreed at the contested case hearing on October 20, 1993, that she had not been terminated. She did not characterize her leaving work as quitting, stating that she left because she was physically unable to perform her job, and said she called Mr. W to tell him that because he wouldn't file workers' compensation, she would stay with her family in (state).

The claimant testified that while she worked for employer, she had an additional part-time job. The record indicates that the second employer was (employer 2).

Attendance records from the employer show that claimant was listed as being on a two-week vacation from March 2nd until March 13th. On Monday, March 16th, she was logged in as sick, and then her time card bears the notation that "[claimant] phoned from [state] 7:00 am today stated that she had to stay in [state]. to take care of ill relative + would try to find work there."

The record indicated that by March 18, 1992, claimant applied for unemployment benefits. She stated that she did this because she had been refused workers' compensation by her employer and needed money to live on and obtain necessary medical treatment. A separation statement furnished by claimant, but which she stated was filled out by someone else, stated that claimant quit work in order to move back to (state). The Texas Employment Commission (TEC) denied her claim on April 10, 1992, citing that she was disqualified from benefits because she left employment to move. Claimant appealed this decision, on a form from the (state) Department of Labor, stating that "living in Texas with the money my job wer (sic) paying I could not meet the coss (sic) of living so I have a home hear (sic) in [state]- I don't have to pay rent . . . ." It appears from TEC records that the appeal was considered by a hearing officer but again denied.

The decision of the hearing officer does not mention that claimant contended she had been injured. It appears that claimant appealed this determination, stating in a signed statement of June 29, 1992 that she was fired on March 17, 1992. It appears that claimant's further appeal was denied and that on or about August 19, 1992, she stated in another appeal to TEC that she had been ill and injured at the time but didn't want anyone to know for fear of losing her job.

Claimant acknowledged when questioned on cross-examination that her statements prior to this had not been complete or correct in identifying the reason she was not working, and said that she determined in August 1992 that it was important to tell the truth.

Aside from the August 1992 statement to TEC, there is no evidence that claimant's position was that she did not want to report her injury, or that she felt intimidated about reporting it. Claimant unequivocally maintained that she had told Mr. W about her injury. She stated that her relations at the work place were like one big family. At the first session of the contested case hearing, she agreed that she had not been fired. At the reconvened hearing, however, she testified that she heard later that she had been fired.

Claimant first filed a claim for workers' compensation with the Texas Workers' Compensation Commission in January 1993.

Mr. W testified that claimant never mentioned at all that she was injured, and he only found that she was claiming a work-related injury when contacted in March 1993 by (name) about the claim. Mr. W stated that there would be no reason for claimant to lift the box she claimed to have lifted. He said that boxes of toilet tissue would be put in place by male movers, and that workers were thereafter supposed to remove individual rolls as needed. He stated that had claimant told him she was injured, he would have given her the option of going to a company doctor or her own doctor. Mr. W stated that on March 16th, he heard from someone else that claimant was sick and so indicated on her time form. Later that day, he stated that she called in and quit, stating that she was doing so to care for an ill relative.

An affidavit from Ms. J, Mr. W's secretary, stated that claimant never told her she injured her back, but had approached her and said she was going to visit a sick relative in (state) while on vacation. She further stated that sometime after claimant's termination from the company, claimant told her she was going to seek medical treatment for a possible heart problem.

Claimant's brother, (RD), testified that claimant was hurt and could not work, and he had helped her move to (state). He stated that he knew about her injury and her disability based upon what she told him about it.

Concerning claimant's disputes about the accuracy or completeness of the statement of the evidence, we note that the Appeals Panel has before determined that contended omissions from the statement of the evidence do not constitute reversible error.

Texas Workers' Compensation Commission Appeal No. 92185, decided June 18, 1992. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Texas Employers' Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ). The facts of how an injury occurred that are set out in a medical record would not be good evidence to prove that an accident in fact occurred. Presley v. Royal Indemnity Co., 557 S.W.2d 611 (Tex. Civ. App.- Texarkana 1977, no writ). Such statements consist of what a worker tells a doctor, not what the doctor observed. Further we would note that Dr. T's history does not recite a work-related injury in any case, but appears to be taken from claimant's information sheet in which she claimed she was lifting large boxes and was not hurt at work. Claimant's brother likewise stated that what he knew of claimant's injury and her pain was what she told him. Thus, we cannot fault the hearing officer for noting that the claimant was basically the only witness on much of her case, most especially the occurrence of an injury and disability therefrom. Conflicting evidence on the matter of notice was the hearing officer's responsibility to resolve.

It is frankly hard to avoid the conclusion that claimant's statements on her unemployment benefits application and related documents are inconsistent with some of her testimony at the hearing. Claimant identified her signature on pertinent documents, and, although she identified some of the text of those documents as having been written by others, she signed such documents herself. We cannot find error when a hearing officer, charged with evaluating credibility and weight of evidence, concludes that the testimony of a witness is undermined by contradictions. Such determinations of credibility and weight are clearly within the purview of a trier of fact, and do not amount to a deprivation of due process simply because those judgments are not made in favor of the claimant.

We affirm the hearing officer's decision on all issues as supported by sufficient evidence in the record.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Lynda H. Nesenholtz
Appeals Judge