APPEAL NO. 94087

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing was held in (city), Texas, on December 17, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) was not injured at any time while working for the employer, that she, without good cause, failed to timely report her alleged injuries to her employer and/or to the Texas Workers' Compensation Commission (Commission) (file a claim within a year), and that she did not suffer disability as a result of her alleged injuries. Claimant appeals finding fault with most of the hearing officer's findings of fact and conclusions of law urging, in essence that she has met her burden of proof to establish her injuries, that she had good cause for not timely reporting them and that she has had disability. The carrier responds that the evidence is sufficient to support the findings and conclusions of the hearing officer and urges that the decision be affirmed.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, the decision is affirmed.

There were 12 issues in this case involving three separately claimed injuries occurring on (dates of injuries). The issues on each of the three alleged injury were whether the claimant was injured in the course and scope of her employment, whether the claimant had disability, whether the employer was timely notified of an injury or whether there was good cause for untimely notice, and whether the claimant timely filed a claim for workers' compensation or whether there was good cause for untimely filing. The evidence in the case is fairly and adequately set forth in the hearing officer's Decision and Order and is adopted for purposes of this decision. Very briefly, the claimant is a 69-year-old lady who worked for (employer) as a "greeter" until sometime in March 1992. She asserts that she tripped and fell on a mat at the store entrance on (dates of injuries). She claims that the first fall was witnessed by her supervisor who, although not assisting her, asked if she was "all right" to which she responded "yes." She apparently continued working without incident and not mentioning any problems or injury to anyone. She saw a chiropractor on October 16, 1991, after she got up from a nap and could not walk because of her back. She returned to work on October 22, 1991, but again did not mention anything about any work-related injury. She testified that she tripped on the mat and fell again on (date), but did not indicate she was injured, did not report an injury, did not see a doctor, and continued to work. The claimant testified that she tripped and fell in an aisle on (date), and that it was witnessed by a supervisor and a couple of employees. She did not indicate she was injured and apparently got up by holding on to someone.

The store manager stated that he did not ever see the claimant fall and that she did not report any job-related injury to him while she was working at the store. One of the employees who witnessed the (month) incident indicated that the claimant did not trip and fall but "kind of wilted" to the floor. She stated as best she knew the claimant did not hurt herself and worked the rest of the day. Another employee, apparently referring to the (date

of injuries) incident, said she saw the claimant fall but that the claimant did not trip and that she "just went down" and that she appeared to be all right.

The evidence established that the claimant was terminated on March 7, 1992, because the employer was concerned about her and that they wanted her to see a doctor and indicated she would not be allowed to work without a release. Medical records introduced do not indicate that she mentioned any fall at work but that she had noticed a gait disturbance for several years and that it seems progressive. Another medical report indicated that the claimant stated she had "intermittent mild low back pain for at least 20 years." She was diagnosed as suffering from various back conditions including degenerative disc changes, bilateral spondylolysis, and spondylolisthesis. She also suffers a neurological deficiency which affects her balance. The evidence also established that the claimant first reported her alleged injury to her employer on or about (date), and that the first report of any injury to the Commission was on or about (date). There was also evidence that on or about March 7, 1992, the claimant decided that her physical complaints resulted from the falls at work.

Clearly, the claimant has significant physical problems and has become convinced that they relate to the incidents she describes at work. However, there is convincing evidence that her health problems were not incurred in the course and scope of her employment. Of course, she was able to continue working following each described incident, she did not appear injured to anyone, she did not report any injury to anyone until well over a year later, her medical records do not provide linkage of her condition to her work and do support other causes of her difficulty, and her testimony is basically uncertain and uncorroborated concerning the sustaining of any injuries in the course and scope of her employment. 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). It is his function to resolve conflicts and inconsistencies in the evidence and to determine the facts. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Where there is sufficient evidence, as there is here, and the findings and conclusions are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no basis to disturb the decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. We also do not find merit to the notice and disability issues relating to the three claimed injuries.

Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge