APPEAL NO. 94152

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 January 12, 1994, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) did not establish that she suffered an injury in the course and scope of her employment, that she did not give timely notice of the alleged injury and did not establish good cause for failing to give timely notice, and that she did not suffer disability from a compensable injury. Claimant appeals urging that there was sufficient evidence presented to establish an injury in the course and scope of her employment, that timely notification was made and that she suffered disability. The respondent (carrier) urges that there is sufficient evidence to support the decision of the hearing officer and asks that it be affirmed.

DECISION

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

The decision and order of the hearing officer set forth the pertinent evidence adequately and fairly. Accordingly, we adopt the statement of evidence for purposes of this review. Very briefly, the claimant asserts that she sustained a back injury on (date of injury), performing her normal duties with her employer, (employer). Her duties included waiting on customers, assembling and bagging clothing and lifting clothing up to amounts of 25 pounds. She testified that later in the day of (date of injury), she experienced pain in her back and that she told her employer about it. She was approximately 9 weeks pregnant at the time and she claims she started spotting that evening. She was treated in an emergency room and hospitalized for several days for bleeding and threatened miscarriage and did not return to work although her gynecologist, (Dr. L), indicated that she could return to work with a restriction of no heavy lifting. In a May 4, 1993, note, Dr. L indicated his opinion that it was "highly probable" that the injury the claimant sustained at work lifting clothing led to her vaginal bleeding, threatened miscarriage, and lower back pain. Claimant testified that she told her employer of her injury on the (date of injury) and again in a phone conversation on November 28th and on December 17th, when she brought in a note from Dr. L dated December 4, 1992.

The employer testified that the claimant did not report any injury to him on (date of injury) and that he was out of town the next time the claimant states she notified him of an injury. He testified that the first time he had any notice of a claimed back injury was on January 20, 1993. He stated that the December 4th letter the claimant brought him referred only to claimant's pregnancy and threatened miscarriage.

Earlier medical records do not mention any back injury; however, medical records dated after the birth of the claimant's baby in June 1993 reported diagnostic findings of disc lesions at the L4-L5 and L5-S1 levels. Reports of other doctors diagnosed lumbar sprain and strain, one of which noted multiple pains characterized as migratory polyarthritis. This doctor's records also noted that claimant reported to him that she did not report an injury to

her employer on (date of injury). In a handwritten note to the claimant's doctor from a referral doctor, (Dr. P), a recommendation for referral to a neurologist was made with a notation that, "as you already know, nerve compression by a prolapsed disc is often seen in pregnancy."

The hearing officer determined that the claimant did not establish that her work activities were a producing cause of her present back condition and that, without good cause, she did not timely notify her employer of the alleged injury. Clearly, there was conflicting evidence before the hearing officer on the issues of injury in course and scope of employment and timely notice. As the sole judge of the relevance and materiality of the evidence and the weight to be given the evidence (Section 410.165(a)), the hearing officer resolves such conflicts and makes findings of fact. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. The hearing officer may believe all, part or none of the testimony of a given witness (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)) and the testimony of a claimant only raises an issue of fact and may be believed or disbelieved. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Also, the hearing officer determines the weight to be given conflicting medical experts. Highlands Underwriter's Insurance Co. v. Carabajal, 503 S.W.2d 336 (Tex. Civ. App.-Corpus Christi 1973, no writ). There was evidence here from which the hearing officer could reasonably infer that the claimant's current back condition had not been sufficiently shown to have occurred on the job. The lack of any contemporaneous medical reports indicating a back injury, the lack of timely notice by the claimant of a back injury (the hearing officer apparently gave greater weight to the testimony of the employer on this issue), together with the medical evidence indicating the claimant's condition was not uncommonly associated with pregnancy, form a sufficient basis to support the hearing officer's findings. Only were we to find, which we do not, that the hearing officer's determinations 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 the decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Lopez v. Hernandez, 595

S.W.2d 180, 183 (Tex. Civ. App.-Corpus Christi 1980, no writ); Appeal No. 92232, *supra*. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge