APPEAL NO. 950227

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 25, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. Addressing the disputed issues, he determined that the appellant (claimant herein) did not sustain a compensable injury on (date of injury), as alleged; that without good cause she failed to timely notify her employer of the alleged injury; and that she did not have disability. A fourth issue concerning claimant's average weekly wage was resolved by stipulation of the parties. The claimant appeals, expressing her disagreement with these adverse determinations. The respondent (carrier herein) replies that the decision and order of the hearing officer are supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant's work involved assembling parts for air conditioners. She testified that on the morning of (date of injury), (unless otherwise indicated, all dates are in 1994), she got up from her stool to pick up a large blue box of copper wires and in lifting them she felt a sharp pain in her back at the waistline. Even though she was hurting a great deal, she said she continued working and told two coworkers right away that she hurt her back. She stated that after a few days the pain got worse until at some point she could not sit for more than 15 minutes at a time. She said she first told (Mr. D), the overall assembly supervisor, on May 12th that she hurt her back on (date of injury) while trying to pick up the copper wires and pointed out to him that the pain was in a different part of her back than what she experienced in a prior injury in 1991. The claimant admitted she never told her site supervisor about her injury because the supervisor was angry with her and, in any case, it was the claimant's belief that this supervisor would do nothing with her report of injury.

The claimant said she first sought medical care for this injury from (Dr. P) on June 20th. She testified that she had not done this sooner because she kept expecting Mr. D to make an appointment for her, but he never did. Dr. P's history indicates that the claimant was experiencing back pain for the past four months "off & on." The claimant insisted Dr. P was mistaken in the history of how long she had back pain which, according to the claimant, may have been attributable to language problems. Dr. P recommended physical therapy. The claimant said she again told Mr. D on June 24th about her injury after a visit with Dr. P. The claimant next sought treatment from (Dr. M) on August 31st. On October 14th, Dr. M diagnosed lumbar and cervical strain. An MRI of the lumbar spine taken the next day was read as normal except for very mild degenerative change at L5-S1. Dr. M excused the claimant from work on October 14th, giving a diagnosis of "lumbar HNP." When this duty excuse was renewed on October 19th, the diagnosis changed to bulging disc. The claimant apparently has not worked since the end of June.

(Ms. H), the employer's vice-president, who was in charge of the workers' compensation program, testified that she was first told on July 15th that the claimant was contending she had a work-related injury. Until then, the claimant was using her group health benefits to pay for her care. Ms. H said she began an investigation and found that the claimant's coworkers were not aware of an injury to the claimant, and that a male employee, (Mr. M) would bring the wires to the work table. She was also unaware of the larger "blue box" that the claimant said she was lifting when she injured herself.

(Ms. O), the lead person at the claimant's assembly station, also testified that there were no such "blue boxes" as claimant said she tried to lift, but only a blue box smaller than what the claimant described. She stated she was working with the claimant on (date of injury), but the claimant never reported any injury to her or otherwise acted unusual. She denied making any threats to the claimant.

Mr. D testified that he explained to employees in Spanish the company policy to immediately report injuries. His notes reflected that on (date of injury) he was told by the claimant that her back was hurting. He said he asked her if she hurt her back at work and she replied that the pain was on-going. He said the claimant later told him she hurt herself on March 26th and then changed the date of injury to (date of injury). He denied ever telling the claimant she did not have to bring in a doctor's work excuse.

The claimant in a worker's compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether an injury has occurred as claimed is a question of fact. The hearing officer as fact finder is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. It was for the hearing officer to resolve the conflicts and contradictions in the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. Campos, *supra*; Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). The hearing officer was not persuaded by the claimant's account of the circumstances of her injury. Given our standard of review, we concluded that the decision of the hearing officer that the claimant did not injure herself in the course and scope of her

employment on (date of injury) was supported by sufficient evidence and we do not find a proper basis to disturb that determination on appeal.

The claimant also appeals the determination of the hearing officer that the claimant, without good cause, failed to notify her employer of the injury not later than 30 days after the injury as required by Section 409.001. Failure to do so relieves both the carrier and employer of liability under the 1989 Act. *See* Section 409.002. Whether notice is timely given is a question of fact for the hearing officer to decide. In her appeal, the claimant states she did give the required notice to Mr. D in a timely fashion. Mr. D denied this and the hearing officer resolved the issue against the claimant as was his prerogative. We will not overturn this credibility determination.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge