

APPEAL NO. 950393

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 February 8, 1995, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) did not suffer a compensable back injury on (date of injury), that she did not timely notify her employer of the alleged injury, and that she did not have good cause for failing to do so. The claimant appeals the decision urging that the evidence she presented showed that she sustained a new injury and that she had good cause for the untimely notice. The respondent (carrier) cites evidence presented and argues that it is more than sufficient to support the hearing officer's decision.

DECISION

Affirmed.

The Decision and Order of the hearing officer adequately and fairly sets forth the pertinent evidence of record and is adopted for purposes of this review. Succinctly, the claimant claims that she sustained a new injury to her back when she bent over to pick up some scissors and felt a "pop" on (date of injury). Evidence established that she had a previous workers' compensation claim for a back injury in 1988 and another one in 1991. There was also evidence that she had been under continuous though intermittent treatment and therapy for her back both before and after (date of injury). It was conceded that the claimant did not timely report her injury to her employer. At one point she indicated she wanted to save the employer money and at another point that she did not realize she had a new injury until July 28, 1994. She worked for several days following her alleged injury on (date of injury), then was on vacation for two weeks when the plant closed, and when she returned, applied for a leave of absence. She later returned to work for a couple of weeks. She also applied for short-term disability benefits. In applying for the leave of absence and short-term disability, she reported her back problem (the reason for the requests) was not work related.

We have reviewed the evidence of record and find no basis to disagree with the determinations of the hearing officer. It is apparent that he did not find the claimant's testimony to be particularly persuasive, and we find no sound reason to conclude otherwise. 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(e). He resolves conflicts and inconsistencies in the evidence and testimony and determines the facts of the case. Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). Only were we to conclude, which we do not on the record before us, that his determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be any sound basis to disturb the decision. Employers Casualty Co. v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge