APPEAL NO. 92317

A contested case hearing was held on April 24, 1992, at (city), Texas, (hearing officer) presiding as hearing officer. He determined that the appellant sustained an injury in the course and scope of his employment and was entitled to benefits pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Appellant, although having been awarded benefits at the contested case hearing, urges error in the hearing officer's finding of fact that the appellant had a spinal illness or injury prior to the date of the accident in question. Appellant also disagrees with the hearing officer's decision wherein it states ". . . the Claimant is entitled to benefits pursuant to the Texas Workers' Compensation Act for the injury sustained as the result of the fall on (date of injury) and not for his preexisting spinal illness." Appellant points out that because of the confusion in the terms of the decision, the respondent has not paid any benefits to date. Respondent urges that there is sufficient evidence to support the hearing officer's findings and decision and, while acknowledging some confusion in the wording of the hearing officer's decision, that "the issue of the extent of a preexisting injury reducing and its effect on reducing the recovery that the Claimant may be entitled to should best be raised in a benefit review conference." Neither party takes issue with the fact of a compensable injury having been sustained on (date of injury) or that there is entitlement to benefits flowing from that compensable injury.

DECISION

Finding a misstatement of the law and misapplication of the 1989 Act, we reverse and render a modification of the Decision and Order of the hearing officer. Since there is no dispute on appeal with the determination of the hearing office that a compensable injury was sustained by the appellant and that he is entitled to benefits under the 1989 Act, that matter need not be addressed in this decision.

On (date of injury), the appellant slipped and fell sustaining an injury to his back. This occurred while he was performing his job and this injury subsequently rendered him unable to work for a period in excess of seven days. He worked the days immediately following the incident and was laid off with a number of other employees on (date) Medical reports in the file support the hearing officer's finding that the appellant had a spinal illness or injury prior to (date of injury). The report from the doctor who the appellant first saw on March 12, 1991 contains the follow statements:

> [Appellant] reports that he was working on some truck parts and had a slip which he feels really aggravated his already painful back.
>
> * * * * *
>
> CT Scan ordered by [Dr. Mc], a surgeon, reveals disc bulges at L4-L5 & L5-S1 levels with mild degenerative bony arthritis. The bone scan test was within normal limits as read by [Dr. G], radiologist.

* * * * *

This patient has sustained chronic repetitive lumbar and cervical sprain/strains aggravated by a near slip on the floor at work. These sprains are accompanied by ligamentous instability myofascitis and localized evidence of nerve root irritation. These injuries are of a permanent nature.

* * * * *

Due to the structural weakness of the lumbar spine, micro traumatically induced by his high amount of ongoing bending, stooping and twisting required by his job and the neurological defects manifested, it is apparent that the patient's symptoms are going to be recurrent.

In his testimony, the appellant denies he had back, neck or shoulder pain prior to the slip and fall on (date of injury), and believes that such information in the medical report was probably a mistake made by the doctor.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Article 8308-6.34(e). It is within his province, as the finder of fact, to resolve conflicts and inconsistencies in the evidence before him. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex.Civ.App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 92232 (Docket No. redacted) decided July 20, 1992. There is sufficient evidence to support the hearing officer's finding of fact that the appellant had a spinal illness or injury prior to (date of injury). However, that finding does not have any impact on this case, at least at the present time.

An injury suffered in the course and scope of employment does not have to be the sole cause of disability and an employee's predisposing infirmity or condition does not preclude compensation. Baird v. Texas Employers Insurance Association, 495 S.W.2d 207 (Tex. 1973); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex 1977). We have previously stated that Article 8308-4.30 of the 1989 Act (contributing injury) may reduce a carrier's liability only for impairment income benefits and supplemental income benefits. That article does not, nor does any other provision of the 1989 Act to our knowledge, reduce a carrier's liability for temporary income benefits or medical benefits where a compensable injury is established. Texas Workers' Compensation Commission Appeal No. 91030 (Docket No. redacted) decided October 30, 1991; Texas Workers' Compensation Commission Appeal No. 92192 (Docket No. redacted) decided July 1, 1992. *See also* Texas Workers' Compensation Commission Appeal No. 92032 (Docket No redacted) decided March 16, 1992. An aggravation of a preexisting condition or injury or a re-injury can be the basis for entitlement to benefits. Texas Workers' Compensation Commission Appeal No. 91094 (Docket No. redacted) decided January 17, 1992; Texas Workers' Compensation Commission Appeal No. 92168 (Docket No. redacted) decided June 12, 1992. (We are not here concerned with any questions of reasonableness of

medical care or disputes on the cost of particular treatment. *See* Chapter D, Medical Benefits, 1989 Act). We noted in Appeal No. 91030, *supra*, that under the prior workers' compensation law, courts permitted reduction of a carriers' liability for prior and subsequent compensable injuries which contributed to a claimant's incapacity. Article 8306, Sec 12c (repealed). That is not the situation under the 1989 Act with regard to temporary income benefits or medical benefits.

We find disconcerting the statement in the request for review that no benefits at all have been paid to the appellant. While the hearing officer's order injected confusion into the matter and potentially misconstrues the law regarding the payment of temporary income benefits and medical benefits under the circumstances present in this case, the refusal to pay any benefits at all because of "some confusion" does not seem to be reasonable.

The hearing officer's Decision and Order are as follows:

DECISION

The Claimant, [appellant] suffered a compensable injury in the course and scope of his employment. Therefore, the Claimant is entitled to benefits pursuant to the Texas Workers' Compensation Act for the injury sustained as the result of the fall on (date of injury) and not for his preexisting spinal illness.

ORDER

The Carrier, [respondent], is hereby ORDERED to initiate medical benefits and pay income benefits, if and when they accrue, in accordance with this decision, the Texas Workers' Compensation Act, and its associated Rules. The Carrier is not required to initiate benefits to the Claimant for his preexisting illness or injury.

The hearing officer's Decision and Order are reversed insofar as modifications are necessary and they are modified by striking from the Decision the words "and not for his preexisting spinal illness" and from the Order the words "[t]he Carrier is not required to initiate benefits to the Claimant for his preexisting illness or injury." The remaining portion of the Decision and Order are approved. Benefits due should be paid without delay.

_____

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____

Joe Sebesta
Appeals Judge

_____

Philip F. O'Neill
Appeals Judge