

APPEAL NO. 961767
FILED OCTOBER 16, 1996

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 14, 1996, a contested case hearing (CCH) was held. In response to the issues at the CCH, the hearing officer determined that respondent (claimant) sustained an injury at work on _____, but that he did not have disability. On appeal, appellant (carrier) challenges the compensability determination. Claimant responds that sufficient evidence supports the hearing officer's determinations.

DECISION

We affirm.

Carrier first contends the hearing officer erred in determining in Findings of Fact Nos. 1 and 2 that claimant's employer was (employer) and that it, carrier, was the carrier in this case. Based on the evidence in the record, we conclude that the hearing officer's determinations in this regard are not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier next contends the hearing officer erred in determining that claimant sustained a compensable injury on _____. Carrier contends that claimant failed to prove causation, asserts that claimant's back problems were due to prior injuries, and points to evidence that it contends shows claimant was not credible. Carrier asserts that claimant was complaining of similar symptoms shortly before the _____, alleged injury, and complains that claimant failed to disclose some of his prior injuries.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm. Section 401.011(26).

An aggravation of a preexisting condition is an injury in its own right. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994; INA of

Texas v. Howeth, 755 S.W.2d 534, 537 (Tex. App.-Houston [1st Dist.] 1988, no writ). A carrier that wishes to assert that a preexisting condition is the sole cause of an incapacity has the burden of proving this. Texas Employers Insurance Assoc. v. Page, 553 S.W.2d 98 (Tex. 1977); Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1992. Merely asserting aggravation does not carry the burden that the proponent has to prove that an injury occurred. Texas Workers' Compensation Commission Appeal No. 92463, decided October 14, 1992. The claimant must prove more than a mere unresolved recurrence of symptoms inherent in the etiology of the preexisting condition. Texas Workers' Compensation Commission Appeal No. 92518, decided November 16, 1992. Instead, the claimant must show that there has been some enhancement, acceleration, or worsening of the underlying condition from an injury. See Texas Workers' Compensation Commission Appeal No. 93416, decided July 8, 1993; Texas Workers' Compensation Commission Appeal No. 94168, decided March 25, 1994. Whether there has been an aggravation is generally for the trier of fact. Texas Workers' Compensation Commission Appeal No. 92654, decided January 22, 1993.

Claimant testified that he hurt his back while lifting a battery at work on _____. He said he had sustained prior compensable and noncompensable back injuries. Claimant said his pain after the _____, lifting incident is different in that it is now constant and indicated that his muscle spasms are now more frequent. Dr. SU and (Dr. SI both testified that the medical records do not show an injury from the _____, incident.

The evidence conflicted about the claimant's MRI results and whether the MRI reports were correct. The record contains a February 1996 MRI report which does not mention disc bulges and states that claimant does not have any disc herniation, spinal stenosis, or neural foraminal encroachment. An MRI taken after the April 1996 injury states that claimant had posterior annular bulges at L5-S1 and L4-5 and a broad-based posterior disc bulge touching and slightly effacing the thecal sac at L3-4. Dr. SU testified that the April 1996 MRI report was probably incorrect. Dr. SU stated that the MRIs were misread, that claimant had a congenital defect in his spine, and that the April 1996 MRI does not show any injury. The hearing officer apparently judged the credibility of the medical evidence and the MRI reports and found that the April 1996 MRI report did differ from the preinjury February 1996 MRI report, thus showing an injury. From the conflicting evidence, the hearing officer could and did find that claimant sustained a back injury on _____. We will not substitute our judgment for that of the hearing officer where, as here, the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Carrier contends that there was evidence that claimant was not credible and that he had been complaining of back pain just before his _____ injury. The issue of claimant's credibility was for the hearing officer to decide. The hearing officer considered the evidence regarding claimant's prior back problems and regarding claimant's credibility,

as well as the other evidence in the record and chose to believe claimant sustained an injury on _____. Another hearing officer might have reached a different result in this case. However, we will not substitute our judgment for the hearing officer's in this case because the determination that claimant injured himself on _____, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Carrier contends that the hearing officer erred in determining that Dr. SU was "unable to determine" whether claimant sustained a new injury on _____. Carrier contends that both Dr. SU and Dr. SI reported that, based on reasonable medical probability, claimant did not sustain a new injury on _____. Both doctors stated that they were unable to tell whether claimant had an accident at work and both indicated that they were basing their opinions on the medical evidence they reviewed. Both indicated that it was their testimony that the medical records did not show an injury. However, Dr. SU agreed that it is possible to have damage to the physical structure of the body that would not show up on an MRI report. The hearing officer heard the medical testimony in this case and judged the credibility of the MRI reports and of Drs. SU and SI. Again, credibility was the hearing officer's call in this case. Given our standard of review, we will not disturb his determinations regarding injury.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge