

## APPEAL NO. 990851

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 22, 1999. She determined that the respondent (claimant) sustained a compensable low back injury on \_\_\_\_\_, and had disability from December 5, 1997, through September 15, 1998. The appellant (carrier) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

### DECISION

Affirmed.

The claimant sustained compensable low back injuries on (prior date of injury no. 1), and on (prior date of injury no. 2). He testified that while picking up a box on \_\_\_\_\_, he felt an audible pop in his low back. He said he was taken to the company doctor that day. Apparently he returned to work on December 5, 1997, and was suspended for reasons unrelated to his claimed injury. He saw Dr. R on December 10, 1997. In a report of this date, Dr. R described the incident on \_\_\_\_\_, as "another injury while on the job." The claimant said that even though he was still taking medications for one of the prior injuries, he considered himself more or less "totally recovered." He apparently left this employment on January 19, 1999. He claimed disability from December 5, 1997, until September 15, 1998.

Ms. B, the wellness manager for the employer, testified by telephone that there were no witnesses to the claimed injury and she was told by a third party that he saw the claimant on December 4, 1995, and the claimant did not look to be in discomfort or otherwise injured. There was also in evidence a memorandum of June 18, 1998, for the claimant=s filed signed by a Mr. L which discussed the offer of a so-called "last chance" agreement that was extended to the claimant and which he declined. The curious comment appears in the memorandum that the claimant on March 16, 1998, "stated he was not hurt and was ready to return to work."

The claimant had the burden of proving he sustained a compensable injury on \_\_\_\_\_, and had disability for the period claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The aggravation of a preexisting injury or condition may be a separate injury in its own right provided it is an enhancement, acceleration or worsening of the underlying condition; has a reasonably identifiable cause; and is more than the recurrence or remanifestation of symptoms of the prior injury. Texas Workers= Compensation Commission Appeal No. 93866, decided November 8, 1993. Whether a compensable injury has occurred and whether the claimant had disability as claimed were questions of fact for the hearing officer to decide. Texas Workers= Compensation Commission Appeal No. 93449, decided July

21, 1993; Texas Workers= Compensation Commission Appeal No. 93560, decided August 19, 1993.

The hearing officer considered the claimant credible in his testimony about the circumstances of his claimed new injury. Dr. R referred to the claimant=s condition as "another injury." In its appeal, the carrier asserts only that these determinations are against the great weight and preponderance of the evidence; are clearly erroneous; and are based on insufficient evidence; and that the claimant did not meet his burden of proof. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer, but find the testimony of the claimant and the treatment note of Dr. R sufficient to support the appealed findings in this case.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst  
Appeals Judge

CONCUR:

Philip F. O'Neill  
Appeals Judge

Gary L. Kilgore  
Appeals Judge