

APPEAL NO. 991161

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 April 28, 1999. He determined that the appellant (claimant) did not sustain a compensable occupational disease/repetitive trauma injury and that she did not have disability. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that she did not sustain a compensable occupational disease/repetitive trauma injury. On appeal, claimant contends that the medical evidence shows that she sustained an aggravation of her cervical condition, a wrist injury, and reflex sympathetic dystrophy in her hand. The applicable law regarding occupational disease injuries and our appellate standard of review are stated in Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Section 401.011(26); Section 401.011(34); Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. An aggravation of a previous condition or injury can rise to the level of a new injury. Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. To be compensable, generally, an aggravation must be a new injury and not merely a transient increase in symptoms from an existing condition. Texas Workers' Compensation Commission Appeal No. 94107, decided March 10, 1994. See also Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994.

Claimant testified and indicated that she sustained a work-related injury to her neck, shoulder, arm, and wrists. She testified regarding her duties and described what she said were repetitive tasks involving the use of her neck, arms, and hands. The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a compensable injury, and resolved this issue against claimant.

The hearing officer heard claimant's contentions regarding her alleged injury and reviewed the medical evidence of causation. Claimant contends the medical evidence establishes that she sustained a compensable injury. There was medical evidence that claimant was diagnosed with various wrist, shoulder, neck, and arm conditions. However, the hearing officer was the sole judge of the credibility of the medical evidence and he determined what weight to give to that evidence. The hearing officer reviewed the evidence regarding causation and determined that claimant did not meet her burden of proof. The hearing officer determined that claimant "did not suffer an injury in the form of a repetitive trauma occupational disease." We will not substitute our judgment for his because the hearing officer's

determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Given our standard of review we will not overturn the hearing officer's decision. *Id.*

Claimant contends the hearing officer erred in determining that she did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Because there was no compensable injury, there can be no disability.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge