APPEAL NO. 991207

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 May 7, 1999. She determined that the appellant (claimant) did not sustain a compensable injury on _____ or _____, and that he did not have disability. Claimant appeals, contending that the hearing officer's determinations are against the great weight and preponderance of the evidence. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that he did not sustain a new compensable back injury, as opposed to a flare-up in symptoms from a prior injuries. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of 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 as disease naturally resulting from the damage or harm. Section 401.011(26). An aggravation of a preexisting condition may itself constitute a new injury. Texas Workers' Compensation Commission Appeal No. 951468, decided November 16, 1995. Whether there is a new injury or a mere flare-up in symptoms of an old injury is a fact question for the hearing officer. Appeal No. 951468.

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.

In this case, claimant claimed an _____ aggravation injury to his lumbar spine and an injury to his cervical spine. The hearing officer summarized the evidence in the decision and order. Briefly, claimant testified that he injured his back and neck at work on _____, while lifting a case of beverages. Claimant said he continued to work and that he sought medical treatment on August 26, 1998. Claimant testified regarding three alleged prior injuries. Claimant said he was in a motor vehicle accident (MVA) in 1995, but denied injuring his back. A medical record from Dr. B stated that claimant was treated with physical therapy and medications for neck and back pain from a 1995 MVA. Claimant testified that he treated with Dr. M for two years regarding a 1996 work-related back injury. Claimant testified that he also sustained a prior lower back and leg injury at work in 1997. There was some

evidence that claimant had sought treatment with Dr. F, the doctor for his prior 1997 injury, in June or July 1998, but that approval for treatment was denied. Claimant denied that he had ever had a previous back injury.

In a January 1999 report, Dr. H stated that claimant reported an _____, lifting injury; that an MRI shows multiple levels of rather impressive disc disorder; that the lifting injury is an aggravation of a preexisting condition; and that the condition is related to claimant's employment. In a January 1999 MRI report, Dr. C reported that claimant had a "bulge/protrusion" at L3-4, L2-3, and L1-2. Dr. C stated that the bulge/protrusion at L2-3 mildly indented the ventral thecal sac. In a January 1999 cervical MRI report, Dr. C stated that claimant had a "bulge/protrusion" at C4-5 and C5-6 and that he had a "1 - 2 mm focal midline posterior disc protrusion/herniation" at C6-7.

The hearing officer determined that, if anything, claimant was still continuing to "feel the effects of his 1995, 1996, and 1997 injuries . . . ." The hearing officer was the sole judge of the credibility of the witnesses and medical evidence. As the fact finder, she considered the issue of whether claimant sustained a neck injury and an aggravation injury to his back in _____ and resolved this issue against claimant. Regarding whether a comparison of MRI reports establishes an injury, the hearing officer considered this evidence and decided what facts were established. Despite any MRI evidence that claimant had a cervical and lumbar spine condition, the hearing officer was not required to find that claimant sustained a compensable injury at work in _____. We will not substitute our judgment for the hearing officer's in that regard 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 he did not have disability. A claimant cannot have disability if there is no compensable injury. Section 401.011(16). We perceive no error.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge