APPEAL NO. 991408

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On June 9, 1999, a contested case hearing (CCH) was held. In response to the issues at the CCH, the hearing officer determined that the respondent (claimant) sustained a compensable low back injury on _____, and that she had disability from September 25, 1998, to October 26, 1998, and from November 9, 1998, through the date of the CCH. Appellant (carrier) challenges these determinations on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier first contends the hearing officer erred in determining that claimant sustained a new compensable back injury on _____, as opposed to a flare-up in symptoms from a 1995 prior injury. Carrier contends that claimant had sustained a compensable injury to her knees in 1995, that she had related gait problems and back pain, and that her current back problems are the natural result of the prior knee injury.

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 a 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.

Claimant testified that she was lifting at work on _____, when she felt a sharpness and pain in her buttocks. She said she had sustained a prior bilateral knee injury in 1995 and that she was still having problems with her knees in 1998. Claimant said her knee also locked on _____, but that her doctor told her it did so because of a nerve "in her buttock." Claimant said she had not had epidural injections or therapy for her back until after her back injury of _____.

There was medical evidence from Dr. P, claimant's treating doctor, that claimant had suffered back pain prior to September 1998. Dr. P treated claimant for her 1995 bilateral knee injury and also for her current back complaints. In a January 19, 1998, response to a letter from claimant's attorney, Dr. P stated that claimant sustained a new back injury on _____.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. She stated in the decision and order that claimant appeared credible in her testimony regarding the mechanism of injury. As the fact finder, she considered the issue of whether claimant sustained a new back injury on _____. Carrier's contentions regarding whether claimant sustained a repetitive trauma injury, whether her prior back pain was related, and whether she sustained a back injury during a specific lifting incident at work on _____, were for the hearing officer to consider. The hearing officer reviewed the evidence and determined that claimant sustained a compensable back injury on _____. We will not substitute our judgment for the hearing officer's in that regard because her determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Appeal No. 951468, *supra*; Cain, *supra*.

Carrier contends the hearing officer erred in determining that claimant had disability. Carrier's contention is that, because there was no new injury, claimant did not have disability regarding a new injury. We reject carrier's contention because we have affirmed the determination that claimant sustained a new injury. Carrier also contends that any disability is related to claimant's 1995 compensable knee injury and not to the _____, incident.

In a _____, report, Dr. P stated that: (1) claimant sustained a "LS pelvis sprain and strain," as well as a knee strain; (2) the "main symptoms" were "in the low back and left knee"; (3) claimant had severe radicular symptoms; (4) claimant was placed on "no work" status; and (5) the patient demonstrated an injury to the low back with left sciatica, combined with knee injuries. In an October 15, 1998, work status slip, Dr. P stated that claimant is unable to work, but that she may go back to light-duty work on October 19, 1998. In an October 26, 1998, work status slip, Dr. P stated that claimant may return to full duty on October 28, 1998. In an October 29, 1998, work status slip, Dr. P stated that claimant may work full duty for eight hours per day. All three work status slips reference an "LS sp/st," apparently a lumbosacral sprain strain, and not a knee injury. In a November 18, 1998, report, Dr. P noted that claimant's supervisor said claimant could not return to work until she had a full-duty release. In a December 21, 1998, report, Dr. P stated that claimant's diagnosis includes "LS s/s" and states that claimant is in a "no work" status. In a January 11, 1999, letter, Dr. P stated that claimant is under his care for a work-related injury, that the diagnosis includes "lumbosacral spine/pelvis sprain and strain"; and that claimant has been on "no work" status since October 27, 1998. Claimant said she lost time from work due to her back injury beginning in September 1998, and that she returned to full-duty work from October 27, 1998, to the second week in November. Claimant said she was taken off work at that time and that she has not returned to work since then. From this evidence, which conflicted regarding the dates of disability, the hearing officer could and did

determine that claimant had disability due to the _____, back injury from September 25, 1998, to October 26, 1998, and from November 9, 1998, through the date of the CCH.

We affirm the hearing officer's decision and order.

_____
Judy L. Stephens
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge