APPEAL NO. 991944

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On August 13, 1999, a contested case hearing was held. With respect to the issue before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on (current date of injury). Appellant (carrier) appeals on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury on (current date of injury). Carrier asserts that claimant experienced only a continuation of her prior (1st date of injury) compensable back injury and that she did not sustain a new back injury on (current date of injury).

A finding of a new injury or aggravation of a preexisting condition is not necessarily compelled simply because a claimant experiences pain. The claimant has the burden to prove that an injury occurred. However, the mere assertion that there has been an aggravation does not mean that the claimant has met this burden. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. What must be proved is not a mere recurrence of symptoms inherent in the etiology of the preexisting condition that has not completely resolved, but that there has been some enhancement, acceleration, or worsening of the underlying condition from the injury. Whether a claimant has sustained a compensable new injury as claimed by the claimant, or a compensable injury by way of aggravation of a preexisting injury or condition, are ordinarily questions of fact to be determined by the hearing officer.

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.

Claimant said she sustained a (1st date of injury) compensable injury and that she was off work initially for seven days, off work again in May 1997, and that she had returned to work on June 24, 1997. Claimant said she had been "feeling a lot better" when she returned to work in June 1997. Claimant testified that she sustained a new compensable

back injury on (current date of injury), when she attempted to prevent a client from falling. Claimant testified that her (current date of injury), injury was different than the (1st date of injury) injury because in August 1997, she felt a burning sensation and a pop in her back. Claimant said her doctor, Dr. S, told her that she sustained a new injury. Claimant said she was off work for two or three days initially, and that Dr. S took her off work completely in December 1997. She said she has not returned to work since that time.

On an August 18, 1997, form, Dr. S stated that claimant sustained a "reinjury" to her back, that claimant does not need diagnostic testing, and that she is not at maximum medical improvement. An October 23, 1997, medical note from Dr. S states that claimant hurt her back again and that she has pain down her left leg and into her knee. A report indicates that claimant had a negative myelogram in November 1997.

Here, the hearing officer reviewed the evidence and determined that claimant sustained at least an aggravation injury to her back on (current date of injury). Claimant testified that she had been feeling better after her prior injury and that her current pain is different than the pain she felt after the prior injury. We have reviewed the evidence in this case and we conclude that this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. The fact that there could have been different inferences based on the record does not mean that there is reversible error.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge