

APPEAL NO. 000071

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 1, 1999. The hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and that he had disability from January 11, 1999, to the date of the CCH. Appellant self-insured appeals these determinations on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Self-insured contends the hearing officer's determination that claimant sustained a compensable back injury is not supported by sufficient evidence. Self-insured asserts that claimant was not credible and that medical evidence from Dr. R was not credible because Dr. R was incorrect about assumptions he made regarding claimant's condition.

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 aggravation of an ordinary disease of life may be a compensable injury in its own right if the aggravation occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 941577, decided January 9, 1995. However, "there must be an active incident or sequence of incidents which are alleged to have resulted in the enhancement, acceleration or worsening of the pre-existing condition," as distinguished from a "mere recurrence of symptoms inherent in the etiology of the preexisting condition that has not resolved." Texas Workers' Compensation Commission Appeal No. 94168, decided March 25, 1994; Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. A claimant may meet his burden to establish an injury through his own testimony, if the hearing officer finds the testimony credible. See Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

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, the evidence conflicted regarding whether claimant sustained an aggravation injury on \_\_\_\_\_. Claimant testified that he injured his back shoveling for several hours at work. He said he had had three prior back surgeries for prior injuries, but

that he had been able to work since his recovery from his last surgery. He testified that he thought his last injury was in 1990. Claimant said he had been working for the self-insured since May 1998. In a June 1999 letter, Dr. R stated that claimant's MRI showed a change from his studies taken before his \_\_\_\_\_ injury and that he now has a herniation that displaces a nerve root. Dr. R noted that the MRI quality was poor and that claimant needed a myelogram and CT scan. Claimant testified that self-insured did not authorize the additional testing.

The hearing officer resolved the conflicts in the evidence. We will not substitute our judgment for the hearing officer's because her determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Self-insured next challenges the sufficiency of the evidence to support the hearing officer's disability determination. We apply the Cain standard of review to this challenge. The applicable standard of review and the law regarding disability is set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995. The testimony from claimant supports the hearing officer's disability determination. We will not substitute our judgment for the hearing officer's because her disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

Judy Stephens  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Tommy W. Lueders  
Appeals Judge