APPEAL NO. 000332

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 December 2, 1999. The hearing officer determined that the appellant (claimant) did not sustain an injury in the course and scope of employment on _____, and did not have disability resulting from an injury sustained on _____.

The claimant has appealed, and points out that a new injury is demonstrated by the fact that the claimant now has injuries to his thoracic and cervical spine, whereas his previous injury involved only his low back. The respondent (carrier) responds that the claimant had ongoing, substantial problems in his spine and that the hearing officer's assessments of credibility and weight of the evidence are supported.

DECISION

We affirm the decision and order.

The claimant was employed by (employer), at the time of his claimed injury. He said that his job entailed continuous lifting and twisting. On _____, as he was assembling some frames, he said, he felt a pop while lifting a hangar part that weighed 50 to 75 pounds. The claimant continued to work, but when he could hardly get up the next day, he called and reported his injury to Mr. C. Mr. C told him to go to the doctor then bring proof of the doctor's assessment.

The claimant went to Dr. G. Dr. G's April 1, 1999, report noted sprain/strain and IVD disorder and radiculitis. Cervical, thoracic, and lumbar radiographs were negative. Dr. G took claimant off work every month through November 1999. His treatment notes indicate that the claimant's entire spine showed tenderness at various times and was treated by Dr. G.

The claimant said he had gone to Dr. G previously for back injuries that occurred in April 1996 and June 1998. The claimant was given a zero percent impairment rating (IR) for his 1996 injury, although it was then noted that he had a herniated disc at L2-3 and L4-5. The claimant contended that although he missed three to four months work for each injury, he was back working full duty with no continuing effects from those injuries. Payroll records showed that the claimant did not work a full 40-hour week for his employer from January through March 1, 1999; the claimant explained this in terms of the nature of the weather not making it possible to work a full week during that time. When the carrier sought treatment records from Dr. G for any injuries prior to the _____, incident, Dr. G responded that he had no earlier records.

It was brought out that the claimant was examined by a designated doctor on January 5, 1999, for his 1998 injury, by Dr. M. He was given a seven percent IR. At that time, claimant was reported as stating he had difficulty sleeping due to pain, that he could not lift more than 30 pounds, and that his pain level was four or five on a 10 scale. The herniated disc at L2-3 was noted.

The claimant was neurologically examined on May 13, 1999, by Dr. B for his current injury and found to have indicators of bilateral carpal tunnel syndrome and indications of cervical radiculopathy.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). In Texas Workers' Compensation Commission Appeal No. 93866, decided November 8, 1993, we stated that "aggravation" has a somewhat technical meaning and that to be compensable an aggravation "must be a new and distinct injury in its own right with a reasonably identifiable cause. . . ." The mere recurrence or manifestation of symptoms of the original injury does not equate to a compensable new aggravation injury. Rather, as we discussed in Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994, a compensable aggravation injury must be proven by evidence of "some enhancement, acceleration, or worsening of the underlying condition. . . ."

In this case, while it appears that the cervical and thoracic areas are new areas of treatment by Dr. G beginning on April 1, 1999, full records from Dr. G for earlier injuries were not available. Furthermore, the hearing officer may not have accorded as much credibility to the claimant's assertion that he was recovered from his 1998 injury after he returned to work within four months, because he reported pain and discomfort to the designated doctor in January 1999 that was at odds with this. Finally, the hearing officer could disbelieve that the fact that claimant did not work a full week through early 1999 to the date of his injury was due solely to the weather.

We cannot agree that the decision of the hearing officer is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust, and we affirm her decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge