APPEAL NO. 000517

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 February 15, 2000. The issue at the CCH was whether the respondent (claimant) had disability "beginning on October 28, 1999," and continuing through the date of the hearing. The hearing officer determined that the claimant had disability beginning October 28, 1999, and continuing through February 15, 2000, the date of the CCH.

The appellant (carrier) appeals, arguing that the claimant failed to prove that his inability to work was the result of his _____, injury rather than intervening injuries. The carrier argues that the hearing officer's decision is not factually or legally supported in the absence of medical evidence proving that his condition after the _____ injury had not resolved. The carrier argues that the decision is against the great weight and preponderance of the evidence. The carrier points out that the hearing officer improperly restated the issue and that there is a clerical correction to be made in one of the findings of fact. There is no response from the claimant.

DECISION

Affirmed.

We must first agree that there are two clerical corrections to be made. First, in Finding of Fact No. 6, it is clear that the reference to February 11, 1999, should be February 11, 2000. Likewise, although the carrier argues that the hearing officer improperly "changed" the issue, we believe this results from a clerical error as well. We therefore correct the reading of the issue under "Statement of the Case" to read as it did when reported from the benefit review conference: "Did the claimant have disability from 9-17-99 to present resulting from the injury sustained on _____?" The hearing officer was still free, within this issue, to find a period of disability that began on a later date.

The claimant was employed to hang walls in homes manufactured by (employer). On _____, he was hit and knocked down by a wall section and injured his head, neck, shoulder, low back, and finger (resulting in amputation of the tip of the middle finger). The claimant's time records from the employer show that he was off work for his injury from the date it happened until April 5, 1999. Claimant's doctor was Dr. S, who released him at this point to light duty. The human resources manager for the employer, Mr. M, stated that claimant worked light duty from 7:00 a.m. until 11:00 a.m. The claimant was released by Dr. S to full duty on April 22nd, but a controversy developed because the claimant contended he was still unable to do the work. Dr. S put claimant back on light duty for a week beginning July 16th but he was returned to unrestricted duty as of July 26th.

The employer asked for medical documentation to support the claimant's refusal to do certain work and, according to Mr. M, none was produced. Claimant walked out of a meeting

with his supervisors that was called to review his refusal to do all assigned tasks and either quit or was terminated on September 16, 1999. He changed his treating doctor to Dr. K, and was told on October 28, 1999, when he saw Dr. K that he would not be able to work. Both Dr. K and claimant testified that no formal "off work" slip was issued because the claimant was already not working.

Dr. K ordered an MRI; it was done on November 4, 1999, and reported two small herniated lumbar discs and two small cervical disc herniations. Dr. K testified that claimant's reported symptomology was consistent with the history of his January injury.

Claimant agreed that there were two other incidents at work that did not cause lost time or further lasting injury. On May 12, 1999, a box of staples and nails fell on his shoulder and pulled on his left arm. On July 14, 1999, he fell from a ladder. The claimant said he was briefly returned to light duty after this, and said that Dr. S took additional x-rays. He denied that he did not fully recover from this fall. Somewhat surprisingly, none of Dr. S's records were put into evidence. Dr. K testified that while the incidents may have exacerbated claimant's symptoms of the _____ accident, in his opinion no additional injury was caused.

On August 9, 1999, a designated doctor certified that the claimant had not reached maximum medical improvement and postulated that he might reach it in six to eight weeks. A functional capacity assessment performed November 1, 1999, showed claimant unable to perform many of the requested maneuvers.

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. . . ."

To prove that a subsequent injury is the sole cause of a claimant's current condition, the burden is on the carrier to prove that the claimant's subsequent condition is the sole contributing factor to the claimant's current condition. Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994; Texas Workers' Compensation Commission Appeal No. 94280, decided April 22, 1994; *see also* Texas Workers' Compensation Commission Appeal No. 93864, decided November 10, 1993, and decisions and cases cited therein. This is so because an injury is compensable even though aggravated by a subsequently occurring injury or condition. Appeal No. 94844, *supra,* and cases cited therein. The mere existence of an intervening injury does not establish that the intervening injury is the sole cause of the claimant's condition. There may be more than one producing

cause of claimant's current condition, namely the original compensable injury and the subsequent noncompensable auto accident.

In this case, we agree that there is substantial support on the evidence for the determinations of the hearing officer. He evidently chose to believe Dr. K, as he could do as the sole judge of the weight and credibility of the evidence. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

We cannot agree that the decision was against the great weight and preponderance of the evidence, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge