APPEAL NO. 001161

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 May 10, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury to his lumbar spine on _____, and that he did not have disability because he had not sustained a compensable injury. The claimant appeals, asserting that he had sustained a new compensable injury on "_____" and refers to medical reports which support his position. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant testified that he was employed by the self-insured's street department and that on _____, while he was assisting some coworkers moving traffic lights he felt a sharp pain in his low back. The claimant has a long history of low back injuries, going back to _____ or before. The claimant had sustained a prior low back injury in _____ and had spinal surgery for that injury in _____. Medical evidence shows that the claimant was released to full duty without restrictions on May 28, 1999. The claimant settled his _____ injury (pursuant to the law in effect prior to January 1, 1991) in June 1999 without medical.

There was conflicting evidence regarding the events of December 24, 1999. The claimant sought treatment with Dr. H who in reports dated January 13, February 1, and March 16, 2000, comments that since the claimant "had a specific injury at a specific incident on a specific date" the claimant "suffered a new injury." Dr. H bases this conclusion on the fact that the herniation to the claimant's back is at a different level, the L4-5 and L5-S1 level, than the _____ injury and "this is a newer herniation and confirms that the patient has a new injury." In evidence are six MRIs of the lumbar spine performed between June 1990 and February 28, 2000. MRIs performed on January 30, 1992, and December 9, 1992, indicate herniated discs at the L4-5 and L5-S1 levels. The hearing officer, in her Statement of the Evidence, comments:

> However, there are six MRI's of the lumbar spine dated between June 1990 and December 1992 [sic, January 28, 2000], two of which reveal a herniation at L4-5 and two which reveal a bulging disc impinging upon the anterior thecal sac and associated with moderate canal stenosis. [Dr. H's] letter dated March 16, 2000 refers to the MRI dated August 11, 1992 which revealed a central bulging disc at L4-5 when addressing whether or not the Claimant sustained a new injury, yet he does not address the findings of the MRI performed on January 30, 1992 nor December 9, 1992 which are essentially identical to the findings in the MRI performed on February 28, 2000. There were also inconsistencies in the Claimant's testimony, witness testimony and documentary evidence regarding how the claimed injury occurred.

Clearly the evidence, and particularly interpretation of the MRIs, was in conflict. The claimant on appeal asserts that the hearing officer should have accepted Dr. H's reports as conclusive, and that the incident of _____, aggravated and accelerated his preexisting condition.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. 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 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer obviously believed that whatever happened on _____, did not constitute a new injury or aggravation of the claimant's preexisting condition. Whether a new injury has occurred or whether the claimed condition is a continuation or flare-up of a preexisting condition is a factual matter for the hearing officer to resolve. In this case, the hearing officer's decision is supported by sufficient evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

In that we are affirming the hearing officer's decision on no compensable injury, the claimant cannot by definition in Section 401.011(16) have disability.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge