

APPEAL NO. 001366

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 1, 2000. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury to his lumbar spine on _____; (2) claimant did not timely report an injury to his employer; (3) claimant did not have disability; (4) claimant is not barred from pursuing workers' compensation benefits because of an election of remedies. The claimant appealed the determinations regarding injury, disability, and timely notice on sufficiency grounds. The appeals file does not contain a response from respondent (carrier).

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not sustain a compensable injury and that he did not have disability. Claimant also contends that he proved that he timely reported his injury, noting that his supervisor no longer worked for employer and could not be found so that he could testify.

The hearing officer summarized and discussed the facts in her decision and order. Briefly, the claimant said he injured his low back and left leg at work while lifting a bucket of water. Claimant said his supervisor, Mr. C, entered the kitchen after his injury and claimant told him he had an accident and asked him to "please report it." Claimant said he saw Dr. R, who released him to light-duty work. After MRI testing, claimant was diagnosed with a herniated disc.

The applicable law regarding injury, disability, and timely notice issues and our standard of review are set forth in Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Sections 409.001 and 409.002; and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. An aggravation of a previous condition or injury can rise to the level of a new injury. Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. To be compensable, generally, an aggravation must be a new injury and not merely a transient increase in symptoms from an existing condition. Texas Workers' Compensation Commission Appeal No. 94107, decided March 10, 1994. See *also* Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994.

The matters claimant raises in his brief involved credibility and fact issues, which the hearing officer resolved. A review of the decision and order indicates that the hearing officer simply did not believe that claimant sustained a work-related injury in the manner he testified to or that he reported it to Mr. C. The hearing officer was acting within her

province as fact finder in deciding what evidence she believed. The hearing officer stated that claimant did not meet his burden of proof regarding the appealed issues. Claimant asked the Appeals Panel to review the evidence to see whether the events occurred as claimant testified. However, the Appeals Panel cannot do that because the hearing officer is the sole judge of the credibility of the evidence and her determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain. Because claimant did not have a compensable injury, he did not have disability. Disability, by definition, requires that there must have been a compensable injury.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kathleen Decker
Appeals Judge

Robert W. Potts
Appeals Judge