

APPEAL NO. 001774

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 July 5, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and that he did not have disability. The claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

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. It is undisputed that claimant had a prior left shoulder injury. He asserts that he sustained a new left shoulder injury on _____, while moving a heavy item at work.

The hearing officer reviewed the evidence and noted the law regarding aggravation of preexisting conditions and new injuries. *See generally* Texas Workers' Compensation Commission Appeal No. 000963, decided June 16, 2000; Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. The hearing officer considered whether there was a mere recurrence of symptoms inherent in the etiology of the preexisting condition that has not completely resolved, or whether there has been some enhancement, acceleration, or worsening of the underlying condition from the injury. The hearing officer resolved this fact issue and determined that claimant did not sustain a new injury. Appeal No. 000963; Appeal No. 94428.

We note that claimant's medical records state that he was treated for left shoulder "major" tendinitis in 1999, before the incident in question. After the _____, incident, Dr. D stated that he believed that claimant might have a rotator cuff tear. However, a subsequent MRI ruled out a rotator cuff tear. This March 2000 MRI report did note an "abnormal signal" that had not been noted in the MRI performed before the _____, incident. That MRI performed after the _____, incident indicated that claimant has supraspinous tendinitis. However, claimant had already been diagnosed with tendinitis before the _____, incident. The hearing officer could consider this evidence along with evidence that claimant may have sustained a shoulder injury outside of work, in making her determinations.

Regarding whether any witnesses were truthful in their testimony, this was a matter for the hearing officer to consider and we will not substitute our judgment for hers in that regard. Regarding whether the hearing officer incorrectly stated that claimant sustained a prior compensable injury with this employer or elsewhere, we conclude that any error in this regard was harmless. We conclude that the hearing officer's determinations are 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).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge