

## APPEAL NO. 001965

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 31, 2000. The hearing officer determined that: (1) the respondent/cross-appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; (2) claimant did not timely report his injury or have good cause for such failure; and (3) claimant did not have disability. Appellant/cross-respondent (carrier) appealed the fact findings related to the injury issue, contending that claimant did not sustain an aggravation injury. Claimant appealed the adverse determinations regarding injury, disability, and timely notice. Claimant also complained of hearing officer bias and about the hearing officer's discussion of the exhibits. Carrier responded that the hearing officer reached the proper conclusions in this case. Issues regarding carrier waiver and sufficiency of carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) were withdrawn by agreement.

### DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that he did not sustain a compensable injury. Claimant testified that on \_\_\_\_\_, he slipped at work while lifting a cylinder and injured his back and neck when he almost fell. Claimant said his pain increased over time, that he thought the pain would go away, and that he did not realize he had sustained an injury until his doctor, Dr. V, told him on March 5, 1999. Claimant said he reported an injury on March 8, 1999, after he had talked to Dr. V. Claimant was diagnosed with a back and neck strain.

Claimant contends that the hearing officer was biased and that he incorrectly stated that notes from Dr. V dated January 18, 1999, were omitted from claimant's exhibits. However, the record reflects that the hearing officer was correct and that Dr. V's handwritten notes of that date were not included in claimant's exhibits, although carrier included them in its exhibits. This note stated that claimant had had back pain for three months, which claimant said at the hearing was a mistake on Dr. V's part. We have reviewed the record and we perceive no hearing officer bias. The hearing officer's statements in the decision and order regarding the exhibits and regarding the purpose for which certain exhibits were offered do not reflect bias. We also conclude that the hearing officer's determination that claimant did not sustain a compensable injury is 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). The hearing officer simply did not believe claimant's version of the events regarding when he sustained his injury. The evidence conflicted and the hearing officer resolved the conflicts and decided what facts were established. We perceive no error. Given our affirmance of the injury determination, we also affirm the disability determination. Because claimant did not sustain a compensable injury, he did not have disability.

Claimant complains that the hearing officer determined that he did not timely report his injury. Claimant said he trivialized his injury and did not realize he had an injury he needed to report until March 8, 1999, when he talked to Dr. V about it. The hearing officer determined that claimant did not trivialize the injury and that he did not have good cause for failing to report it within 30 days. After reviewing the evidence, we conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

In its cross appeal, carrier contends that the hearing officer erred in finding that claimant had sustained knee, back and neck problems prior to \_\_\_\_\_, and that he exacerbated his "symptoms" on \_\_\_\_\_. Carrier contends that claimant did not sustain a compensable aggravation injury on \_\_\_\_\_. The hearing officer determined that claimant only exacerbated his symptoms and that claimant did not sustain a compensable injury. To be compensable, generally, an aggravation must be a new injury, i.e., damage or harm to the physical structure of the body, 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 hearing officer did not find that claimant sustained a new aggravation injury on \_\_\_\_\_. We perceive no error.

We affirm the hearing officer's decision and order.

\_\_\_\_\_  
Judy L. Stephens  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Elaine M. Chaney  
Appeals Judge

\_\_\_\_\_  
Philip F. O'Neill  
Appeals Judge