

APPEAL NO. 002516

Following a contested case hearing (CCH) held on September 28, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant herein) did not suffer a compensable injury to his left knee on _____, and that the claimant did not have disability resulting from such injury. The claimant appeals contending these determinations were contrary to the evidence and to some of the findings of the hearing officer. The respondent (self-insured herein) responds that the claimant is only trying to reargue the facts of the case on appeal and that the hearing officer's finding that the claimant suffered an exacerbation of his symptoms is not tantamount to finding an injury by aggravation.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence in his decision and we adopt his rendition of the evidence. The claimant contended that he injured his left knee on _____, while working for the self-insured. The self-insured contended that the claimant's knee problems are a continuation of a prior injury rather than a new injury. There was conflicting evidence concerning this matter. The hearing officer found that claimant did not sustain a new injury on _____, finding as a matter of fact that the claimant did exacerbate the symptoms of a former injury to his knee. The claimant argues on appeal that the hearing officer's finding of exacerbation is equivalent to a finding of aggravation.

The claimant had the burden of proving he sustained a compensable left knee injury as claimed on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The aggravation of a prior condition can be a new injury provided the claimant establishes a reasonably identifiable cause. The mere recurrence or remanifestation of symptoms of the prior condition does not equate to an aggravation injury. Rather, there must be evidence of "some enhancement, acceleration or worsening of the underlying condition." Texas Workers' Compensation Commission Appeal No. 93866, decided November 8, 1993. In the case we now consider, the claimant pointed to a specific event that he believed caused a new knee injury. The hearing officer considered the evidence and concluded that the claimant did not meet his burden of proving a compensable injury. We believe it is important to point out that the hearing officer, as fact finder, was charged with the responsibility of weighing the evidence and determining what facts had been established. Section 410.165(a). As such, he could accept or reject all, part, or none of the evidence (Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993), including the medical evidence. Texas Employers

Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We do not believe that evidence compelled a conclusion one way or the other. 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). While another hearing officer may have found otherwise, we conclude from our review of the record in this case that there was sufficient evidence to support the determination of the hearing officer that the claimant's evidence was insufficient to establish a compensable injury on _____, and under our standard of review, we affirm that determination.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. See Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kenneth A. Huchton
Appeals Judge