

APPEAL NO. 010239

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 12, 2001, the hearing officer resolved the disputed issues by finding that the appellant (claimant) did not sustain damage or harm to the physical structure of her body while engaged in the exercise of her job duties on _____, and that her inability to obtain and retain employment at her preinjury wage equivalent is not the result of an injury for which workers' compensation benefits are payable. The claimant's appeal urges that based on the evidence these findings and the dispositive conclusions are against the great weight of the evidence. The respondent (carrier) contends in response that the challenged findings and conclusions are sufficiently supported by the evidence.

DECISION

Affirmed.

The claimant testified that she sustained an aggravation of her preexisting low back condition when she lifted a heavy box from a shopping cart at work on _____, and felt a sharp pain in her low back which radiated into her right hip and down her right leg. She described the ensuing pain and right leg symptoms as different from those she had experienced before _____. The carrier pointed to the records of Dr. S which, it contended, reflect complaints of low back and right leg symptoms on February 29, March 2, and March 6, 2000. As the hearing officer observes, the line between a flare-up of symptoms from a preexisting condition and an aggravation injury can be a fine one.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Consistent with her role as the finder of fact, the hearing officer resolved various conflicts and inconsistencies in the evidence against the claimant. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We cannot say that her determinations are 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 decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge