

APPEAL NO. 010387

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 25, 2001. The hearing officer held that the respondent's (claimant) stipulated lumbar injury included an aggravation to his spondylosis and Grade I spondylolisthesis, and that he had disability from September 20, 2000, until the date of the CCH.

The appellant (carrier) has appealed, arguing that the evidence was insufficient to show an aggravation of the claimant's preexisting conditions. The carrier also argues that the evidence does not support disability. The claimant responds by pointing out facts in support of the decision.

DECISION

We affirm the hearing officer's decision.

EXTENT OF INJURY

The hearing officer did not err in finding that the claimant's spondylolysis and Grade I spondylolisthesis were part of his lumbar injury of _____. Most important in our resolution of the case is that the parties stipulated that the claimant "sustained a compensable lumbar spine injury" on _____. There was no attempt to limit the scope of the agreed injury as to the diagnoses. The stipulation satisfied the claimant's initial burden of proof to show that he had damage or harm to the lumbar area as a result of his work-related accident. It was consequently the carrier's burden of proof to show that the sole cause of one component of the diagnosis of the damage or harm was preexisting.

The only evidence whatsoever offered in support of the preexistence of any lumbar condition was a dictionary definition of a Schmorl's node as a bony defect. The determination of the hearing officer that this was not part of the injury has not been appealed. There was not just insufficient evidence, there was no evidence that the sole cause of any manifestations of pain due to spondylosis and spondylolisthesis was preexisting. The claimant, who was 20 years old when injured, gave uncontroverted testimony that he had no prior work or non work-related injuries to his back. The hearing officer's decision in favor of an aggravation injury is supported by the evidence as well as the failure of the carrier to carry its burden of proof.

DISABILITY

The hearing officer did not err in finding that the claimant had disability beginning on September 20, 2000. Although there was evidence developed that the claimant had returned to work doing photocopying for the employer, and then was taken off work again, there was no issue brought forward as to whether temporary income benefits should be reduced for a bona fide job offer. The hearing officer was charged with the responsibility

of resolving conflicts as to the claimant's abilities; her decision that the claimant had disability is supported sufficiently by testimonial and medical evidence in the record. She could choose to give less weight to the full release of the company doctor.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge