

APPEAL NO. 010503

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 February 6, 2001. The hearing officer held that the appellant (claimant) did not have a new back injury on _____, but that his condition was a continuation of his _____ back injury. While he had disability, the hearing officer opined that no temporary income benefits (TIBs) were due because the claimant had been certified to be at maximum medical improvement (MMI) between the _____ injury and the asserted new injury of _____.

The claimant has appealed, arguing facts that he believes show a worsening of his condition. The respondent (self-insured) responds that the evidence favors the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant had a recurrence of his _____ injury rather than a new injury on _____. Essentially, the appeal takes issue with how the hearing officer interpreted or weighed the evidence. However, whether a condition represents a recurrence of the symptoms of a previous injury, or a new injury by way of aggravation, is a fact determination to be made by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93515, decided July 26, 1993. We have also held that an aggravation of a previous condition can be an injury in its own right. Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. However, the new injury must produce more than a mere recurrence of symptoms inherent in the etiology of the preexisting condition that has not been completely resolved, and there must be some enhancement, acceleration, or worsening of the underlying condition from the second injury. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. The hearing officer is supported in her conclusion that the objective testing after the _____, bout of pain was essentially the same as that after the _____ injury. Because there was an undisputed certification of MMI and impairment rating in September 1998, no TIBs were due even though the claimant had disability from his injury. Sections 408.101 and 408.102.

An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust.

Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge