

## APPEAL NO. 010595

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 March 6, 2001. The hearing officer determined that the appellant (claimant) had not sustained a (new) compensable injury on \_\_\_\_\_ (all dates are 2000 unless otherwise noted), and that the claimant did not have disability.

The claimant appealed, citing certain medical reports which she believes support her position. The respondent (self-insured) responds, urging affirmance.

### DECISION

Affirmed.

The claimant was a special education teacher's assistant. It is undisputed that the claimant has a long history of degenerative disc disease. The claimant testified that on \_\_\_\_\_, she was pushing a student in a wheelchair up an incline and that about 30 minutes later, she began to feel pain and spasms in her neck. The claimant saw her rheumatologist, Dr. R, a few days later on a prescheduled appointment and she was eventually referred to Dr. Y. In evidence, and considered by the doctors, were MRIs performed in 1995 and after the incident in question on \_\_\_\_\_.

The hearing officer accurately identified the crux of the issue as being "whether the Claimant sustained a compensable aggravation injury on \_\_\_\_\_, as a result of pushing the wheelchair, or whether she experienced the continuation or natural progression of her underlying cervical pathology." Dr. R, in a report dated January 26, 2001, commented that the claimant "is claiming that the injury on \_\_\_\_\_ served to aggravate her underlying cervical arthritis and cervical disc disease." Dr. Y commented that there "has clearly been progression of the disease at some point between the 1995 [MRI] film and the 2000 [MRI] film" and that there "are obviously chronic changes which built up over the years." Dr. Y, in a report dated July 13, commented that he thinks "the substantial majority of the abnormalities found on the MRI of 5/3/00 represent a natural progression of her pre-existent medical condition." The self-insured presented the testimony of Dr. B, a peer review doctor, who testified that "it was not medically possible that pushing the wheelchair could cause herniation at C5-6 or C6-7."

The medical evidence was in conflict. The hearing officer did a credible job in summarizing the various medical reports and identifying the key factors to be considered. Whether the claimant sustained a new injury or merely suffered a continuation of symptoms from her preexisting condition is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 000670, decided May 17, 2000. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers

Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge