

APPEAL NO. 010652

Following our remand in this case, (hearing officer) issued a decision and order on remand in which he decided that the appellant (claimant) did not sustain a new cervical injury on _____, while in the course and scope of his employment and that the claimant has not had disability. The claimant and (carrier 1), who provided workers' compensation insurance coverage for (employer) in _____ and is the workers' compensation insurance carrier for the claimant's _____ compensable injury, appealed the hearing officer's decision on remand. (Carrier 2), who provided workers' compensation insurance coverage for the employer on _____, responded.

DECISION

The hearing officer's decision on remand is affirmed.

There is conflicting evidence in this case. The claimant sustained a compensable injury to his cervical spine on _____. The medical records reflect that he had fusions at C4-5 and C5-6. The claimant testified that he sustained a cervical injury at work on _____, while manually closing a heavy electronic security gate that was not working properly. Dr. R, the claimant's treating doctor for the 1994 injury, wrote in January 2000 that the claimant sustained an injury at the C3-4 level on _____, when the claimant closed the gate. The medical records reflect that in January 1999, which was prior to the claimed injury of _____, Dr. R noted that the claimant had been having increasing pain in his neck and that the claimant would probably need a cervical MRI. The cervical MRI was done in September 1999 and the radiologist noted that the claimant has mild spondylotic canal stenosis at C3-4, an osteophyte at C4-5, and a solid-appearing fusion from C4-C7. Dr. S reviewed the claimant's medical records and wrote that there is no objective medical evidence to support the existence of a work injury on _____, and that the medical records suggest the natural progression and deterioration of a preexisting condition in the cervical spine.

In Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex. App.-Amarillo 1999, no pet.), the court held that, to the extent that the aggravation of a prior injury caused damage or harm to the physical structure of the employee, it can be said that the resulting condition falls within the meaning of "injury." In his decision on remand, the hearing officer found that the claimant had a flare-up of symptoms from the 1994 injury while closing the gate on _____, but that he did not aggravate his preexisting injury on _____. The hearing officer determined that the claimant did not sustain a new cervical injury on _____, while in the course and scope of his employment.

The 1989 Act makes the hearing officer the "sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence." Section 410.165(a). In Texas Workers' Compensation Commission Appeal No.

91013, decided September 13, 1991, the Appeals Panel stated that, in reviewing a case, the Appeals Panel should not set aside the decision of a hearing officer because the hearing officer may have drawn inferences and conclusions different than those the Appeals Panel deem most reasonable, even though the record contains evidence of or gives support to inconsistent inferences, citing Garza v. Commerical Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ), and that, where the sufficiency of the evidence is being tested on review, a case should be reversed only if the decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, citing Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. Civ. App.-San Antonio 1983, writ ref'd n.r.e.). In the instant case, conflicting evidence was presented to the hearing officer and the hearing officer, as the trier of fact, resolved the conflicts and determined that the claimant did not sustain a new cervical injury on _____, while in the course and scope of his employment. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Without a compensable injury having occurred on _____, the claimant would not have disability, as defined by Section 401.011(16), as a result of that claimed injury.

The hearing officer's decision and order on remand are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge