

APPEAL NO. 010811

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 28, 2001. The issues at the hearing were as follows:

1. Did the [appellant] claimant sustain a compensable injury on \_\_\_\_\_?
2. Did the claimant have disability as a result of an injury on \_\_\_\_\_, and if so, for what period?

The hearing officer found there was not a compensable injury and, therefore, no disability. The claimant timely appeals on the basis that the hearing officer should have found her testimony persuasive. The respondent (carrier) seeks affirmance.

DECISION

Affirmed.

The claimant had injured her lower back in 1995 and 1997. She had reached maximum medical improvement on her old injury in August 1999, with an impairment rating of 13%. The claimant was released back to work in September 1999 by Dr. A, with a restriction of no lifting over 40 pounds. The claimant returned to work and testified that she reinjured her lower back on \_\_\_\_\_. Her testimony conflicted with earlier statements concerning the events and with that of other witnesses. The hearing officer found that the claimant did not carry her burden of proof to support the allegation of a specific injury on \_\_\_\_\_, or disability beginning April 28, 2000. Rather, the hearing officer found that the claimant was merely experiencing "the effects of her 1997 lower back injury and degenerative disc disease."

"The aggravation of a prior condition can be a new injury provided the claimant establishes a reasonably identifiable cause. The mere recurrence or remanifestation of symptoms of the prior condition does not equate to an aggravation injury. Rather, there must be evidence of 'some enhancement, acceleration or worsening of the underlying condition.' [Cite omitted.]" Texas Workers' Compensation Commission Appeal No. 010243, decided March 14, 2001.

There was sufficient evidence to support the hearing officer's decision and that decision was 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). Further, in that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

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