

APPEAL NO. 011126
FILED JULY 05, 2001

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 May 4, 2001. The hearing officer determined that the appellant (claimant) was not injured in an incident that occurred at his employer's premises on _____, and that he continued to suffer the effects of a motor vehicle accident sustained on July 4, 1998.

The claimant has appealed and argues that the hearing officer arrived at a decision inconsistent with his statement of the evidence. He argues that muscle spasms represent additional damage or harm to his body. The claimant argues that the decision is against the great weight and preponderance of the evidence. The respondent (carrier) responds that the hearing officer's findings on lack of compensable injury or disability are supported by the record.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have a compensable injury or sustain disability. The claimant, a used car salesman, contended he fell face forward in a trailer used as the offices of the used car lot. Two witnesses said they heard no fall, although one found him lying on the ground. They testified as to the fact that the claimant experienced pain and was on medication before the purported incident. The accounts of the incident in the medical records differed from that given at the CCH. There was medical evidence that before the incident in question, the claimant was under active treatment for effects of a 1998 motor vehicle accident (which resulted in some fatalities) and subsequent lumbar fusion and removal of his tailbone.

A carrier that wishes to assert that a preexisting condition is the sole cause of an incapacity has the burden of proving this. Texas Employers Insurance Association v. Page, 553 S.W.2d 98, 100 (Tex. 1977); Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1992. In Texas Workers' Compensation Commission Appeal No. 93866, decided November 8, 1993, we stated that "aggravation" has a somewhat technical meaning, and that to be compensable, an aggravation "must be a new and distinct injury in its own right with a reasonably identifiable cause. . . ." The mere recurrence or manifestation of symptoms of the original injury does not equate to a compensable new aggravation injury. Rather, as we discussed in Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994, a compensable aggravation injury must be proven by evidence of "some enhancement, acceleration, or worsening of the underlying condition. . . ." The hearing officer has apparently determined that the carrier either met its burden to prove a sole cause of the disability encountered by the claimant, or that the claimant failed to prove the existence of a worsening of his original condition due to this occurrence. It was the hearing officer's responsibility to determine

whether the muscle spasms noted by the claimant's surgeon constituted a reaction to his underlying condition or a reaction to new damage or harm.

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.). In considering the evidence produced here, we cannot agree that this was the case and affirm the decision and order.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge