

APPEAL NO. 011549
FILED AUGUST 6, 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 was held on June 11, 2001. The appellant (claimant) appeals the determination on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Conflicting evidence was presented at the hearing. 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)). In view of the evidence presented, the hearing officer could find that the claimant sustained a distinct, new injury to her neck, right shoulder, and low back on _____, which did not result from the claimant's compensable injury of _____. Her injury was caused by a specific incident, causing a condition that went beyond a mere continuation of her 1995 injury. Although it is troubling that the hearing officer casts this as an "aggravation" of a preexisting condition (which implies that the earlier injury was a factor), the evidence supports her determination that the second incident is the sole cause of the claimant's condition after _____. 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 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge