APPEAL NO. 012106
FILED OCTOBER 17, 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 August 1, 2001. With regard to the issue before her, the hearing officer determined that the sole cause of the appellant's (claimant herein) low back disc bulges at L3-4 and L4-5 was an injury subsequent to his compensable injury of _____. The claimant appeals, contending that this determination was contrary to the evidence, particularly the report of a doctor chosen by the Texas Workers' Compensation Commission who related the claimant's L3-4 and L4-5 bulging discs to his compensable injury of _____. The respondent (carrier herein) replies that the decision of the hearing officer is supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Under the 1989 Act, the claimant has the burden of proving that he sustained a compensable injury and the extent of his injury. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995. Whatever theory of liability is presented by a claimant, a carrier can defeat liability by establishing that the "sole cause" of the current medical condition is a subsequent, noncompensable injury. *See* Texas Workers' Compensation Commission Appeal No. 93864, decided November 10, 1993. Whether a claimant's medical problems reflect the continuing effects of a compensable injury or are solely caused by an intervening or subsequent event is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 92681, decided February 3, 1993.

The hearing officer is the sole judge of the weight and credibility to be given to the evidence and the relevance and materiality to assign to the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility to resolve the conflicts 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 could believe all, none, or any part of any witness's testimony and could properly decide what weight she should assign to the other evidence before her. Campos. We will not substitute our judgment for the hearing officer's where her determinations are supported by sufficient evidence. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

Gary L. Kilgore
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

CONCURRING OPINION:

I support the result, because the hearing officer has attempted to resolve the issue as brought forward from the benefit review conference, but the issue here was poorly phrased. I believe that "sole cause" applies to an analysis of the reason that a person has disability, and not necessarily to every case of basic causation of medical conditions.

An independent, intervening injury may break the direct connection between the old injury and the new physical damage without being the "sole cause" of the subsequent medical conditions. After all, the scenario of an "aggravation" injury is based upon a preexisting infirmity, and an aggravation injury need not be the sole cause to be considered an injury in its own right. The key in finding a new aggravation injury is whether the subsequent event has caused an enhancement or worsening that would not have existed in the normal course of development of the earlier injury, not precisely whether the second event is the "sole cause" of all conditions observed thereafter. I think a parallel analysis should be done in determining causation issues for continuation of injury versus new injury and the person arguing that the effects of an injury have continued through a subsequent event has at least the primary burden of showing that. When it comes to reviewing why a person might be out of work after a second injury, however, it is then that "sole cause" comes into play as an analytical

tool and the proponent must then show that the preexisting condition was not a factor at all.

Because that is essentially what the hearing officer here has done, regardless of the invocation of "sole cause," I concur.

Susan M. Kelley
Appeals Judge