

APPEAL NO. 012115
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 7, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury (aggravation of his preexisting back condition) on _____, and that he had disability from _____, through April 9, 2001. The appellant (carrier) has appealed, alleging that the incident on _____, did not result in a new and distinct injury. There was no response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in finding that the claimant aggravated his preexisting back injury when he slipped and fell at work on _____. The claimant sustained a compensable back injury on _____, for which he had spinal surgery on June 17, 1998, and May 21, 1999. After follow-up care, he was released to full duty by his surgeon on November 10, 1999, although he continued to receive prescription medications for pain and continued to consult with doctors concerning pain reduction measures and treatments. The evidence was both uncontroverted and corroborated that the claimant slipped and fell on ice at the workplace on _____, and landed on his back. Essentially, the appeal takes issue with how the hearing officer interpreted or weighed the evidence. Whether a condition represents a recurrence of the symptoms of a previous injury, or a new injury by way of aggravation, is a fact determination to be made by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93515, decided July 26, 1993. We have also held that an aggravation of a previous condition can be an injury in its own right. Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. However, the new injury must produce more than a mere recurrence of symptoms inherent in the etiology of the preexisting condition that has not been completely resolved, and there must be some enhancement, acceleration, or worsening of the underlying condition from the second injury. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. The hearing officer determined that the claimant was a credible witness and that there was medical evidence which was sufficient to establish that the claimant sustained a new injury on _____. The fact that the claimant was taken off work on _____, and remained off work through April 9, 2001, supports the hearing officer's determination of disability.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v.

Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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, and we do not find it to be so in this case. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

We affirm the hearing officer's decision and order.

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, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge