

APPEAL NO. 012212  
FILED OCTOBER 31, 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 23, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that she did not have disability from a compensable injury. The claimant appealed both determinations on sufficiency grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant is a flight attendant with a history of work-related back injuries. The claimant testified that on \_\_\_\_\_, she bent down "to the bottom drawer" to get a bottle of wine when she felt a "grab" in her back. The claimant sought medical treatment, and has not returned to work since that time.

On appeal, the claimant correctly argues that the aggravation or exacerbation of a preexisting condition can constitute a new compensable injury. A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). Section 401.011(26) defines "injury" as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease." In Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex. App.-Amarillo 1999, no pet.), the court held that "to the extent that the aggravation of a prior injury caused damage or harm to the physical structure of the employee, it can reasonably be said that the resulting condition fell within the literal and plain meaning of 'injury' as defined by the 71st Legislature" and that "the legislature intended the meaning of 'injury' to include the aggravation of preexisting conditions or injuries." See also Peterson v. Continental Casualty Company, 997 S.W.2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet. h.), in which the court held that the aggravation of a preexisting condition is a compensable injury for purposes of the 1989 Act. In Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994, the Appeals Panel noted that to prove an aggravation of a preexisting condition there must be some enhancement, acceleration, or worsening of the underlying condition from the injury and not just a mere recurrence of symptoms inherent in the etiology of the preexisting condition.

The hearing officer determined that the claimant's testimony as to the cause of her current condition was in conflict with the medical records in evidence. Based on the evidence, he further determined that the claimant was suffering from a gradual degeneration of the L5-S1 disc, and that she did not sustain an aggravation or exacerbation of her preexisting condition. Because the hearing officer determined that the

claimant did not sustain a compensable injury, he found that she did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. 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). Nothing in our review of the record indicates that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

**ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge