APPEAL NO. 020115
FILED FEBRUARY 28, 2002

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 December 20, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals the determinations on sufficiency grounds. The respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and did not have disability. Whether the claimant suffered a new injury to his low back was a question of fact for the hearing officer to resolve. 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, we cannot conclude that the hearing officer's injury determination is 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). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

The decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

MAYOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

DISSENTING OPINION:

I dissent, and would reverse and render, because I believe that the hearing officer did not correctly analyze the case. The decision appears to "leap over" the essential fact of whether the act of changing the tire (the occurrence of which was not refuted by the carrier) caused injury, and instead analyzes the facts only in terms of whether there was an "aggravation" of a prior back condition. Strains and sprains are injuries.

The great weight of evidence, testimonial and medical, establishes that after the claimant changed the tire, he was unable to return to work and experienced pain and limited range of motion. He was diagnosed with a sprain. When a specific incident triggers such events, it cannot be dismissed as a mere "recurrence" of pain.

An injury may be an aggravation of a preexisting condition or an injury in its own right. I do not believe that a worker who experiences one type of back injury is thereafter forever cast in the posture of showing that a second injury has resulted in an aggravation in order to claim a compensable injury. The hearing officer in this case somewhat miscasts previous Appeals Panel decisions as imposing such a burden on the claimant here. It appears to me that the hearing officer never considered whether changing the tire caused an injury, regardless of whether claimant had other previous back injuries.

That being said, an incident may indeed cause injury where there is preexisting infirmity where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). However, the compensable injury includes these enhanced effects, and, unless a first condition is one for which compensation is payable under the act, a subsequent carrier's liability is not reduced by reason of the prior condition. St. Paul Fire & Marine Insurance Company v. Murphree, 357 S.W.2d 744 (Tex. 1962).

The claimant in this case made a prima facie showing of an injury (strain/sprain) and the burden therefore shifted to the carrier to prove that any preexisting problems were the "sole cause" of his subsequent inability to work. No showing having been made, the determination that the claimant did not experience an injury but merely a continuation of pre-existing back problems is so against the great weight and preponderance of the evidence as to manifestly unfair or unjust.

Susan M. Kelley
Appeals Judge