

APPEAL NO. 022647
FILED DECEMBER 4, 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 September 17, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable repetitive trauma injury with a date of injury of _____, and that the claimant had disability from November 16, 2001, through March 13, 2002. The appellant (carrier) appealed. No response was received from the claimant.

DECISION

The hearing officer's decision is affirmed.

The claimant had the burden to prove that he sustained a repetitive trauma injury as defined by Section 401.011(36) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. It appears that the hearing officer determined that the claimant's repetitive work activities caused an aggravation of a preexisting condition. 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.), in which the court held that the aggravation of a preexisting condition is a compensable injury for purposes of the 1989 Act. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations are supported by the claimant's testimony, the reports of the doctors who have treated the claimant, and diagnostic tests. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ABERDEEN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CHARLES MILLER
10370 RICHMOND AVENUE
HOUSTON, TEXAS 77042.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge