APPEAL NO. 032541
FILED OCTOBER 29, 2003

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 20, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appealed, disputing the determinations, and arguing that the hearing officer placed an insurmountable burden of proof on the claimant. The respondent (carrier) responded, contending that the findings and conclusions of the hearing officer are legally and factually supported by the credible evidence. In the alternative carrier alleges the claimant's appeal was untimely

DECISION

Affirmed.

The claimant's appeal was timely filed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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. 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 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 noted that she did not find the claimant's testimony persuasive and that the preponderance of the evidence supports a finding that the claimant continued to experience the effects of his prior back injury which was sustained in 1990. Nothing in our review of the record indicates that the hearing officer's decision

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, 176 (Tex. 1986). We find no merit in the claimant's assertion that the hearing officer placed an insurmountable burden of proof on the claimant.

We affirm the decision and order of the hearing officer.

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

FRED WERKENTHIN
JACKSON WALKER, L.L.P.
100 CONGRESS AVENUE, SUITE 1100
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Edward Vilano
Appeals Judge