APPEAL NO. 033034
FILED JANUARY 9, 2004

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 May 27, 2003, and July 9, 2003. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on (reformed date of injury); (2) the respondent (carrier) is relieved from liability under Section 409.002 because the claimant failed to timely notify his employer of an injury without good cause, pursuant to Section 409.001; and (3) the claimant does not have disability. The claimant appeals these determinations on sufficiency of the evidence grounds. The carrier did not file a response.

DECISION

Affirmed as reformed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions 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 determinations are 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).

The claimant asserts that the hearing officer failed to consider whether he sustained a compensable injury in the form of an aggravation injury to his right knee, in reaching a decision. The hearing officer did find that the claimant did not injure his right knee while in the course and scope of his employment on _____. In our view, this finding clearly implies that the claimant did not aggravate a preexisting right knee condition. *See* Cooper v. St. Paul Fire & Marine Ins. Co., 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"); Peterson v. Continental Cas. Co., 997 S.W.2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet.) (where the court held that the aggravation of a preexisting condition is a compensable injury for purposes of the 1989 Act). As indicated above, such implied finding is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Although not raised by the parties, we reform the hearing officer's Conclusion of Law No. 2 to provide that the claimant did not sustain a compensable injury on (reformed date of injury), rather than _____.

The decision and order of the hearing officer is affirmed as reformed.

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

**CT CORPORATION SYSTEM**
**350 NORTH ST. PAUL STREET**
**DALLAS, TEXAS 75201**.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge