APPEAL NO. 041701
FILED SEPTEMBER 2, 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 (CCH) was held on June 9, 2004, with the record closing on June 14, 2004. The hearing officer determined that the respondent's (claimant) compensable injury of (subsequent date of injury), includes herniations at L4-5 and L5-S1, and that the claimant had disability beginning on (subsequent date of injury), and continuing through the date of the CCH on June 9, 2004. The appellant (carrier) appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable back injury on (first date of injury). The claimant returned to work and sustained another compensable back injury on (subsequent date of injury). At issue in this case was whether the claimant's compensable injury of (subsequent date of injury), includes herniations at L4-5 and L5-S1. The claimant testified that his back injury of (subsequent date of injury), was more severe than his prior injury of (first date of injury). The claimant's treating doctor, Dr. G, testified that he treated the claimant for both injuries and that he was of the opinion that the claimant's injury of (subsequent date of injury), resulted in an aggravation at L4-5 and a new injury at L5-S1. The carrier argues that the claimant's "mere aggravation of lumbar symptoms" does not rise to the level of an injury under the 1989 Act. Essentially, the appeal takes issue with how the hearing officer interpreted or weighed the evidence. 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.

The issues of extent of injury and disability presented questions of fact for the fact finder. 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 to the evidence. There was conflicting evidence in this case. 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). The hearing officer was persuaded by Dr. G's testimony that the claimant's compensable injury of (subsequent

date of injury), includes herniations at L4-5 and L5-S1. Nothing in our review of the record reveals that the hearing officer's extent-of-injury and disability determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

PRENTICE-HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.

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Veronica L. Ruberto
Appeals Judge

CONCUR:

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Daniel R. Barry
Appeals Judge

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Gary L. Kilgore
Appeals Judge