

APPEALS PANEL NO. 94021  
FILED FEBRUARY 14, 1994

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (City), Texas, on December 8, 1993, with \_\_\_\_\_ presiding. The only issue for consideration was whether the respondent's (claimant) compensable injury of (date of injury), included an injury to claimant's back. The carrier, who is the appellant in this action, seeks our review of the hearing officer's determination in claimant's favor. The claimant responds that the hearing officer's decision is supported by the evidence and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

Claimant, who was employed by (employer), was injured on (date of injury), when he was using a jack to hook up a tractor to a hay mower; the jack slipped, knocking him backwards, and the mower hit him in the chest and fell on his left foot. Claimant said he tried unsuccessfully to jerk away as it was falling. Claimant sought medical attention and was ultimately diagnosed with a broken foot by his family doctor, (Dr. H). The claimant conceded he did not mention a back injury when notifying his employer of the injury nor to Dr. H; he said most of his initial pain was in his foot.

At some point thereafter claimant began treating with (Dr. B), a podiatrist. In evidence were three Specific and Subsequent Medical Reports (Form TWCC-64) signed by Dr. B on February 4, March 4, and June 10, 1993, none of which mention a back injury. The claimant contended he did complain to Dr. B about his back, and specifically that he had pain running up his leg. (Claimant's wife's testimony was essentially the same.) On March 8, 1993, on Dr. B's referral, claimant saw (Dr. C), whose Initial Medical Report (Form TWCC-61) stated claimant "was referred to us by Dr. B to assure that there are no other problems that this patient suffers from that were caused by this accident at work." Significant past medical history was given as "None known," and Dr. C's findings were that claimant was examined "and appears to have no other problems other than the treatment for diagnosis above." Claimant said he was not sure whether he told Dr. C about his back, but may have told him about the pains in his leg.

Claimant said he was referred to (Dr. M) for a second opinion for the pain in his foot and leg. In a TWCC-64 dated October 28, 1992, Dr. M recorded a diagnosis of "pain lower leg" and "Sudecks reflex sympathetic (sic) dystrophy," but did not discuss anything but claimant's foot. In August 1993 Dr. B certified claimant as reaching maximum medical improvement (MMI) with a zero percent impairment rating and, claimant said, released him to return to work. Because he did not feel he could do so, claimant said he returned to Dr. M. An MRI of claimant's lumbar spine revealed a herniated disk at L4-5 which Dr. M said "appears to be enough reason for the radiculopathy."

In a letter to the carrier dated September 29, 1993, Dr. B wrote that claimant "has

not complained to me of the previous back pains until approximately August 31, 1993. . . . Patient has not previously complained of back pain and his chief complaint had been related to his foot. I do not feel that the injury to his foot was related to his back pain." In addition, (Dr. J), carrier's doctor who had examined claimant on July 27, 1993, wrote on October 26th that claimant mentioned no back problem to him; his letter enclosed a medical information form he said claimant had filled out wherein "the type of injury or problem he specifically refers to is an injury to his left foot . . . . There is no indication whatsoever that he was complaining of any kind of back problem or radicular problem that could be construed as having come from his back."

In response to a question from the hearing officer the claimant stated that he first began experiencing symptoms associated with his back about one year and one month prior to the hearing. He denied that he had had a prior back injury or had experienced any other accident or injury since that of (date of injury).

In holding for the claimant the hearing officer stated that it was "certainly conceivable that an accident such as the one claimant described could cause unusual stress to the back, and it is understandable that the traumatic nature of the injury to claimant's foot might cause claimant to be unaware of any symptoms in his back for a period of time." She also stated that she found claimant to be a credible witness, and that there was no evidence that claimant sustained a back injury in any other incident.

We agree that it is troubling that there was no concrete, unequivocal complaint of back problems for sixteen months after claimant's injury. However, it was claimant's unrefuted testimony that he was struck in the chest with a heavy mower and that he attempted to jerk away as it was falling. He also testified that he did not immediately experience symptoms associated with a back injury, but rather suffered immediate pain in his foot. We also note that he consistently characterized his back problems as pain running up his leg, which could have been attributed to his broken foot; in addition, one of Dr. M's early reports mentions pain in claimant's lower leg. Claimant's testimony was also corroborated by that of his wife. Further, the hearing officer as sole judge of the relevance and materiality of the evidence and of its weight and credibility, Section 410.165(a), determined that claimant was credible in his accounts of his injury and treatment and in the fact that he did not suffer any other injury or accident to which a herniated disk with radiculopathy could have been attributed.

With the evidence in this posture, we cannot say that it was so weak as to make the hearing officer's determination so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust, thus meriting our reversal. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). While different inferences might reasonably be drawn from the evidence presented, this fact alone is not a sufficient basis to reverse the decision of the fact finder. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992.

The decision and order of the hearing officer are affirmed.

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Lynda H. Neseholtz  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge