APPEAL NO. 94196

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. On December 8, (year), a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent (claimant), on (date of injury), aggravated his compensable lower back injury of (date of injury). Appellant (carrier) asserts that the decision is against the great weight and preponderance of the evidence, pointing out the lack of medical care prior to the (date of injury), incident and the lack of medical evidence indicating that the (year) injury stemmed from the injury of (year). The file contains no response by the claimant.

DECISION

Reversed and rendered.

Claimant sustained a compensable back injury on (date of injury), while working for (employer). Subsequently, he was laid off and moved to (city), Texas, where he received unemployment benefits. While at home, he states that he hurt his back again when picking up his 23 month old son on (date of injury). Claimant states that he was injured in the same area of the lower back both times; he said the first injury's pain was not as bad, but lasted longer than that of the second injury.

The only medical evidence offered does not tie the two events together. Claimant provided three medical exhibits for the hearing officer. The first is a chiropractic report dated August 3, (year), which does not identify the exact area of injury. This report does say, "[d]ermatomes checked by pinwheel test revealed A hypo-sensitive at L4-L5 to the left." The report also says, however, that dermatomes were within normal limits. Claimant's Exhibit 2 is an emergency room note from (date of injury), which indicates tenderness in the L1-L2 area with moderate muscle spasm diffusely. No other area of the back is specified. Claimant's Exhibit 3 is an x-ray report made subsequent to the (date of injury), injury, which only refers to the lumbar spine in saying that no injury is shown and that it is not significantly different from a previous film of November 9, (year).

Carrier's only exhibit is a copy of the first page of a Report of Medical Evaluation in which maximum medical improvement (MMI) was found on March 5, (year) with seven percent impairment. This exhibit does not provide any detail of the location of the (year) compensable injury. As stated, no medical evidence ties the two injuries together. While both injuries are said to be to the lower back, there is no medical evidence to place them at even the same vertebral level. As a result, there is insufficient evidence to determine that the (year) injury at home is a manifestation of the (year) injury. *Compare to* Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, (year), in which there was medical evidence that a subsequent injury at home was "directly related" to the compensable injury. *See also* Texas Workers' Compensation Commission Appeal No. 93855, decided November 8, (year), which affirmed a hearing officer's decision that an injury caused by a sneeze at home was not related to the earlier compensable injury.

The decision and order are reversed and a new decision is rendered that the injury of (date of injury), at home, was not shown to be related to the injury of (date of injury).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge