

APPEAL NO. 980164  
FILED MARCH 11, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 4, 1997, a contested case hearing was held. She (hearing officer) determined that respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability from \_\_\_\_\_ to October 26, 1997. Appellant (carrier) asserts that the decision is against the great weight and preponderance of the evidence, that there was no objective medical evidence showing an injury, and that the claimant's condition is the same as it has always been. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). He testified that he had worked for this employer since July 1993; his date of an alleged injury was \_\_\_\_\_. Claimant described his injury as occurring when he was using a hand-held device to check a bar code approximately two to three inches from the bottom of a door. He said he bent one knee and extended the other leg and with one hand holding a doorknob, he twisted and reached with the other to scan the bar code. (He labeled his position as awkward.) As he tried to move "back around" and up, he could not; he felt a sharp pain in his low back and could not move. After a short period of time, he said he could move and walked slowly to the security office. He said he reported the injury, and there was no issue as to notice. Claimant was then taken to (Hospital), where he said, he was told to see his own doctor.

Claimant also testified that he had prior back injuries in 1989, 1990, 1992 or 1993, and 1995. Claimant said that L4-5 and L5-S1 had been previously identified as having bulging discs. He also said that he had been told he had a degenerative condition. Claimant stressed that he had only been off work, since beginning work for employer four years before, for one week due to his back, and that resulted from straining his back, lifting while not at work in 1995.

Claimant also described his current condition as involving hip pain and leg tingling which, he said, he had never had before. The only tests provided in the recent past were an MRI and x-ray. The MRI showed a loss of normal signal at L4-5 with loss of normal disc height and a bulge at that level, but no herniation. An abnormal signal at the L5 vertebra was said to "may represent an area of bone contusion/edema . . . bone scan may be of additional benefit." While claimant's history to various doctors who saw him in 1997 speaks of his prior back injuries, there are no prior MRI's or CT scans in evidence with which to compare the 1997 report.

After the \_\_\_\_\_, incident, (Dr. D), who claimant identified as his medical insurance treating doctor, saw claimant on May 27, 1997, and said he had an "exacerbation" of his disc disease. (Dr. H) on May 29, 1997, in his impression said the claimant had a history of low back pain "now with new bilateral lower extremity paresthesias." (Later, after the MRI was made, Dr. H said that the disc bulge was at the "same level that he has previously been diagnosed" and said that he felt claimant "just has a chronic pain situation"; he did not comment about the need for a bone scan.) (Dr. R) on June 4, 1997, said that claimant had inflammation of his L5 nerves and also noted muscle spasm. He also assessed that claimant had an "acute exacerbation of his chronic problem." (Dr. J) on July 2, 1997, noted lumbar radiculitis and spasms in the lumbar area. (Dr. L), a neurosurgeon, believed that the 1997 MRI showed "some nerve compression on the left at L4-5."

As stated, no prior MRI showed nerve compression at L4-5 as Dr. L observed in the 1997 MRI, possibly because no prior MRI was provided. In addition, only one record of claimant's medical treatment since October 1995, when he hurt his back while off work lifting weights, was provided which predated the \_\_\_\_\_, injury. That record was dated [date], and only shows treatment for shoulder pain, with no mention of lumbar pain.

While claimant agreed on cross-examination that in recent years he always had lumbar pain, he modified that on reexamination to indicate that he always had a backache when he first arose in the morning, not that he was in constant pain.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The question of whether an incident reflects an injury or is merely a continuation of a prior injury is generally a question of fact for the hearing officer. See Texas Workers' Compensation Commission Appeal No. 950125, decided March 10, 1995, which looked for "enhancement, acceleration, or worsening" of a condition, not just recurrence of symptoms, for there to be an injury. It mentioned two points in reversing a finding of an injury: (1) the lack of a specific incident; and (2) continuing treatment for the prior condition. While the facts are open to interpretation, the claimant did testify to a twisting, bending incident at which time he could not stand up when he felt a sharp back pain; in addition there is no record of continuing treatment for a back injury prior to \_\_\_\_\_, the one medical record from a month before the injury shows no mention of a back problem. The evidence sufficiently shows a specific incident on \_\_\_\_\_, with no continuous back treatment prior to that date. Regarding recurrence of symptoms, there is also evidence of claimant now having a tingling in his legs and an MRI showing nerve compression, when no such signs or symptoms predating \_\_\_\_\_, are in the record; therefore the hearing officer could determine that this was not just a recurrence of symptoms. The evidence sufficiently supports the determination that claimant sustained an injury on \_\_\_\_\_.

While the 1997 MRI, read by Dr. L as showing "some nerve compression" could certainly be considered as objective medical evidence of injury, Texas Workers'

Compensation Commission Appeal No. 92300, decided August 13, 1992, said that objective medical findings are not necessary to determine that an injury has occurred.

While the carrier asserted that disability findings should be reversed, it did so based on its argument that there was no compensable injury. Medical records took claimant off work and have kept him off work until October 1997 when claimant was able to return to light duty. In addition, the claimant testified that he could not return to work until that time. The evidence is sufficient to support the determination as to disability also.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Gary L. Kilgore  
Appeals Judge