

APPEAL NO. 980200  
FILED MARCH 18, 1998

This appeal is brought 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 January 2, 1998. He (hearing officer) determined that the appellant (claimant) sustained a thoracic sprain as a result of installing Sheetrock on \_\_\_\_\_, and that he had disability from September 4 through September 28, 1997, and from October 1 through 15, 1997. The claimant appealed, urging that the hearing officer's determination that the claimant sustained a sprain of the thoracic spine rather than a herniation is contrary to the great weight of the evidence and that the determination that he did not have disability after October 15, 1997, is contrary to the law and the great weight of the evidence. The claimant requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he sustained a herniated disc on \_\_\_\_\_, and that he had disability through the date of the CCH. The respondent (carrier) replied, stating that it did not agree with the finding that the claimant sustained a compensable injury on \_\_\_\_\_, and had disability, but that it did not appeal those determinations; urging that the evidence is sufficient to support the determinations of the hearing officer that the claimant sustained a thoracic sprain and that his disability ended on October 15, 1997; and requesting that the decision of the hearing officer be affirmed.

DECISION

We reverse and remand.

The claimant testified that he had not worked for several years because of injuries; that he had surgery on his lumbar spine in 1993; that his prior injuries did not include his thoracic spine; that he was receiving Social Security disability benefits; that he began working for the employer on August 11, 1997; that he was pleased he was able to return to work; that on \_\_\_\_\_, he was placing Sheetrock on a wall above a door and felt pain in the middle of his back between his shoulder blades; that at that time he did not think it was serious; that he had pain when he tried to work the next day and he worked only a few minutes; that the pain became worse; and that he went to (Dr. C) on September 11, 1997. He said that he had been treated by (Dr. A), a chiropractor, and (Dr. P), who specialized in pain management, and that he was again treated by both of them because of the \_\_\_\_\_, injury. The claimant stated that he was taken off work by his doctors, that in September 1997 he worked as a substitute teacher for two days, that he was not able to continue working as a substitute teacher, and that he could not do the work he was doing when he was injured. He testified that he had an MRI in January 1996; that the only injury he has had since he had that MRI was the one on \_\_\_\_\_; that on September 8, 1997, he tried to get a less stressful job; and that the thoracic pain is the main reason he cannot work.

On September 11, 1997, Dr. C diagnosed spasm of muscle, sprain of unspecified site of the back, and thoracic sprain; prescribed medication; referred the claimant to Dr. A

for chiropractic care; and took the claimant off work for four weeks. A report of an MRI of the thoracic spine from (Dr. S) dated January 5, 1996, contains the following:

There is no evidence of disc herniation. There is minimal spondylosis at T5-6 and T7-8 with a small osteophyte extending posteriorly and minimal posterior extension of disc-like signal. The thoracic cord has a normal image pattern throughout. The neural foramina in the areas visualized are unrevealing. The paravertebral soft tissues are normal.

**IMPRESSION:**

Minimal spondylosis at T5-6 and T7-8 in an otherwise unremarkable magnetic resonance scan of the thoracic spine.

Another report of an MRI from Dr. S dated September 12, 1997, states:

There is no evidence of canal stenosis. There is a small T5-6 disc herniation which remains entirely subligamentous is present [sic]. This produces no compression on the cord. The cord has a normal image pattern throughout. The paravertebral soft tissues are normal.

**IMPRESSION:**

1. Small central T5-6 disc herniation. When available comparison with 1/5/96 should be made.

A report from Dr. C dated October 15, 1997, states that the claimant has an MRI showing a small herniation at T6-7; that thoracic outlet syndrome was negative bilaterally; that mild sensitivity to deep probing palpation was noted in the T6, T7, T8, and T10 dermatome; that upon spinal palpation moderate tenderness was noted on the right at T6, T7, and T9 and the thoracic spine; that there was misalignment in the upper thoracic spine; that there was pain in response to pressure in the upper thoracic spine; and that the diagnosis was 722.51 A degeneration of thoracic or thoracolumbar intervertebral disc." In that report Dr. C also wrote:

This patient should continue on Social Security disability and retraining with TRC [Texas Rehabilitation Commission]. He tried to go back to heavy work, and it was not successful. The pain in this man's back will not allow him to be functional without treatment.

In a report dated October 21, 1997, Dr. A stated that he saw the claimant on September 22, 1997, for a work-related injury sustained on \_\_\_\_\_; that an MRI done on September 12, 1997, confirmed the presence of a disc herniation at T5-6; that the claimant had been a patient for over three years and had not had an injury of the disc at T5-6 during the time he had been a patient; and that his diagnostic impressions were:

1. Central HNP, thoracic (722.31)
  - a. discogenic pain, thoracic (722.51)
  - b. paresthesia (782.0)
2. Thoracic sprain/strain (847.1) grade one
  - a. radiculitis (724.4)
  - b. thoracic pain (724.1)
  - c. low back pain (724.2)
  - d. headaches (784.0)
  - e. neck pain (723.1)
  - f. myalgia (729.1)

The hearing officer made the following findings of fact:

#### **FINDINGS OF FACT**

2. Claimant began working as a sheetrock hanger on August 11, 1997, for the Employer, after almost seven years of not working because of prior injuries to his lower back, neck, arm, and leg.
3. On \_\_\_\_\_, Claimant felt immediate onset of pain in the mid back area as he was attempting to install sheetrock over a door frame.
4. Claimant hoped the back pain of \_\_\_\_\_, was minor because he was reluctant to report an injury to the Employer with his past history of being unable to work as a result of prior injuries.
5. Claimant's mid back condition did not improve overnight and Claimant advised his Employer on September 4, 1997, that he was sick and unable to work.
6. After several days, Claimant's condition did not improve sufficiently for him to return to work, and on September 9, 1997, he notified the Employer that he believed he injured his mid back on \_\_\_\_\_, while installing sheetrock.

7. Claimant sought medical treatment from [Dr. C] on September 11, 1997, and was diagnosed with a thoracic sprain. [Dr. C] advised Claimant to not work for four weeks beginning September 11, 1997.
8. Claimant returned to work as a substitute school teacher for two days during the last of September.
9. Claimant had a MRI of the Thoracic spine on September 12, 1997, and it concluded that claimant had a small herniated disc at T5-6 with no evidence of canal stenosis.
10. Claimant was evaluated by [Dr. C] on October 15, 1997, who provided a diagnosis of degeneration of thoracic and recommended that claimant continue on social security disability, as he tried heavy work and was not successful.
11. Claimant sustained a thoracic sprain as a result of installing sheetrock on \_\_\_\_\_.
12. Claimant was unable to work as a result of his thoracic sprain from September 4, 1997, through September 28, 1997.
13. Claimant was unable to work because of his thoracic sprain from October 1, 1997, through October 15, 1997, the date he was last evaluated by [Dr. C].
14. Claimant's inability to work after October 15, 1997, if at all, is the result of other medical problems, and is not the result of his thoracic sprain of \_\_\_\_\_.

A sprain is defined as "a joint injury in which some of the fibers of a supporting ligament are ruptured but the continuity of the ligament remains intact." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, pg. 1566 (28th ed. 1994). A herniation of an intervertebral disc is a "protrusion of the nucleus pulposus or annulus fibrosus of the disk, which may impinge on nerve roots," and herniation of a nucleus pulposus is defined as 'rupture or prolapse of the nucleus pulposus.' DORLAND'S, page 759. Spondylosis is defined as "ankylosis of a vertebral joint," and "a general term for degenerative changes due to osteoarthritis." Thoracic spondylosis is not defined, but cervical spondylosis is defined as:

degenerative joint disease affecting the cervical vertebrae, intervertebral disks, and surrounding ligaments and connective tissue, sometimes with pain or paresthesia radiating down the arms as a result of pressure on the nerve roots.

DORLAND'S, page 1564. Stenosis is defined as "narrowing or stricture of a duct or canal."  
DORLAND'S, page 1576.

The hearing officer does not mention either of the MRI reports in the Statement of the Evidence in his Decision and Order, and it does not contain a discussion. "MRI" only appears in the Decision and Order in Finding of Fact No. 8, and it states that the MRI on September 12, 1997 showed a small herniated disc at T5-6 with no evidence of canal stenosis. There can be a herniation of a disc without canal stenosis, but a herniation of a disc is not included in a sprain. It is not clear whether the hearing officer did not properly distinguish between a strain and a herniation or whether he did not believe that the herniation resulted from the compensable injury sustained on \_\_\_\_\_. We reverse the decision of the hearing officer concerning the injury sustained by the claimant and remand for him to make an additional finding of fact or findings of fact on that issue. The evidence on disability is conflicting and the fact that other determinations could be made based on the same evidence is not a sufficient basis to overturn factual determinations of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1995. Should he determine that the claimant sustained only a strain and not a herniation, he need not make additional findings of fact concerning disability. Should he determine that the claimant sustained a herniated disc, he should make additional findings of fact concerning disability and again apply the sole cause defense as he did in making Finding of Fact No. 14.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Tommy W. Lueders  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Judy L. Stephens  
Appeals Judge