APPEAL NO. 980217
FILED MARCH 11, 1998

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 December 9, 1997, in (City), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were injury and disability. The hearing officer found that the respondent (claimant) sustained an injury in the course and scope of his employment on _____, and that as a result the claimant had disability beginning on October 21, 1996, and continuing through the date of the CCH. The appellant (carrier) files a request for review, arguing that the evidence was insufficient to establish that the claimant suffered a compensable injury in light of the fact that the claimant had suffered a prior noncompensable injury. The carrier also argued that absent establishing a compensable injury, the claimant could not establish disability. The claimant responds that there was sufficient evidence to support the hearing officer's findings as to injury and disability.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarized the evidence in his decision and we adopt his rendition of the evidence. We will only briefly touch on the evidence most germane to the appeal. This includes testimony by the claimant that on _____, while attaching a coil unit weighing approximately 50 pounds, he felt a pop in his back. The claimant testified that after he returned home he felt pain radiating down his legs. The claimant continued to have problems and went to an emergency room (ER) on Sunday, October 20, 1996. The ER doctor suspected a herniated disc and ordered an MRI. Claimant reported his injury and sought treatment with (Dr. E), D.C., who had been treating him for an earlier automobile accident. The claimant testified that Dr. E told him he could do nothing for him and he should go to another doctor. The claimant testified that he initially went to (Dr. S), who referred him to (Dr. C), who, after trying a course of physical therapy, performed spinal surgery on July 2, 1997. The claimant testified that he has not worked since October 21, 1996, and has not been released to return to work by Dr. C.

The carrier argued at the CCH that the claimant's back problems resulted from a (date of accident), automobile accident. The claimant missed time from work due to this accident but, at the time of the injury made the basis of this claim, had returned to work without restrictions.

On appeal, the carrier argues that the claimant failed to prove a causal relationship between the incident, work and his claimed injury. The carrier asserts that medical evidence is required to prove such causation "where a claimant admits that he had a pre-existing injury to the same part of the body as the result of a prior non-compensable injury."

This is absolutely incorrect. We have held that even when the compensable injury is the result of aggravating a prior condition, such expert testimony is not necessary. Texas Workers' Compensation Commission Appeal No. 971588, decided September 22, 1997. To accept the carrier's argument would require that we ignore the myriad of cases that state that an injury may be compensable even though aggravated by an existing injury or condition or by a subsequently occurring injury or condition. *See* Texas Workers' Compensation Commission Appeal No. 952061, decided January 22, 1996, and cases cited therein.

Carrier's argument that the claimant had the burden of proving that his work-related injury, rather than his prior injury, was the cause of his condition is equally incorrect. If the carrier seeks to avoid liability due to a prior injury, then the carrier has the burden to prove that the prior injury is the sole cause of the claimant's condition. Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994; Texas Workers' Compensation Commission Appeal No. 951608, decided November 10, 1995. Accepting the carrier's argument would turn the sole cause defense on its head and require that the claimant establish that his prior injury was not the sole cause of his present condition. The law puts the burden on the carrier to prove sole cause and, having presented no evidence at the CCH to support such a defense, we find no basis to overturn the hearing officer's decision based upon the fact that claimant merely suffered an injury prior to his compensable injury.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Generally, corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). There was such evidence in this case and it is sufficient to support the decision of the hearing officer on the issue of injury. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Since the only basis upon which the carrier attacks the hearing officer's disability finding is its challenge of his finding of injury, having rejected the latter, we reject the former.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge