APPEAL NO. 980281
FILED MARCH 16, 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 15, 1997, in (City), Texas, with (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) sustained a compensable low-back injury on _____, and that he had resulting disability on June 9, 1997; from June 11 to 13, 1997; and from July 23, 1997, through the date of the CCH. The appellant (carrier) appeals these determinations, contending that they are not supported by sufficient evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant testified that he spent most (about six hours) of the _____, workday operating a backhoe. He said that around noon he began experiencing soreness in his lower back, but told no one when he went home at 2:00 p.m., the end of his shift. The pain worsened overnight and on Saturday, (day after date of injury), his next workday, he reported to work, told Mr. Moyer (Mr. M), the weekend supervisor, that his back started hurting the day before while operating the backhoe, and was sent to the company nurse. He also said he told his coworkers on (day after date of injury) that he could not bend over and "everyone" saw that something was wrong with him. The next day, Sunday, he said, he worked with his son removing fence posts with a tractor. He said that as he bent over to attach a chain to a post, he experienced excruciating pain in his lower back. He went to an emergency room and was eventually diagnosed by Dr. M, his treating doctor at the time, with a right paracentral disc protrusion at L5-S1. The claimant admitted to prior sore backs, but nothing to this degree, and did not recall any particular trauma or twisting that may have injured his back while operating the backhoe. Several witnesses testified at the hearing to the effect that they noticed the claimant's obvious discomfort on Saturday (day after date of injury), but were not aware of, nor did they notice, a problem on the Friday before.

Dr. M, in a series of letters beginning on July 10, 1997, wrote that, in his opinion, the claimant suffered an annular tear at work on July 6, 1997, which progressed to a complete tear and extrusion of nuclear material. On July 10th, he wrote "I do believe that the injury was work related, though the absolute completion of the injury did occur in a home setting. I believe that this injury would not have occurred had not the initial irritation begun at work." On October 31, 1997, Dr. M wrote: "I believe that the stresses involved on a disc in riding a vehicle with relative poor shock absorbing mechanics is very capable of causing an annular tear."

The claimant had the burden of proving that he sustained a work-related injury in the manner claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. In its appeal, the carrier argues that Dr. M's "opinion on causation is uninformed–he does not know about which he speaks." It points to the numerous prior times that claimant operated a backhoe without injury or pain, to the claimant's prior complaints of back pain and treatment by a chiropractor, to his spina bifuda, and, perhaps, most importantly, to the incident of bending at home, not operating the backhoe, as causes of his injury. Even were we to assume that the claimant had a preexisting injury or medical condition of his spine, the aggravation of that condition by work-related activities, could be a compensable injury in its own right. *See* Texas Workers' Compensation Commission Appeal No. 92463, decided October 14, 1992. Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. It has also been held that the incident at work need only be a producing cause, and not the sole cause of the injury for it to be compensable. *See* Texas Workers' Compensation Commission Appeal No. 950800, decided June 30, 1995. In this case, the carrier appears to raise, without specifically identifying it as such, a sole cause defense to liability, that is, that the incident at home (including riding the tractor and using the tractor to pull fence posts) was the sole cause of the annular tear and bulge at L5-S1. *See* Texas Workers' Compensation Commission Appeal No. 93143, decided April 9, 1993; Texas Workers' Compensation Commission Appeal No. 951608, decided November 10, 1995. If so, the carrier had the burden of proof on this question. *See* Texas Workers' Compensation Commission Appeal No. 952061, decided January 22, 1996. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). In the discharge of his fact finding responsibility, he considered the claimant credible and persuasive in his account of what happened at work and at home over the weekend of _____, and Dr. M credible and persuasive in his medical opinion as to the mechanism that produced the initial annular tear and lead to the likely completion of the tear. The carrier provides a different analysis of this evidence. As an appellate review body, we will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence deemed credible by the hearing officer sufficient to support his finding that the claimant sustained a compensable injury on _____, and decline to reverse that determination.

The carrier also appeals the finding of disability after July 23, 1997, the date on which the claimant was terminated from his light-duty work with the employer. The circumstances of the termination were not developed at the CCH, but we observe that termination does not in itself, as a matter of law, end disability. *See* Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991. Dr. G, the claimant's current treating doctor, wrote on September 9, 1997, that the claimant

"continues to have mechanical back pain which he describes as severe and a feeling that his legs are going to go out from under him with pain referred into both legs. Presently the patient appears to be totally disabled." The carrier argues that disability after September 9, 1996, was "long past" by virtue of the claimant's demonstrated ability as shown in a surveillance tape to engage in work and by evidence that he was able to change a tire on his truck and go hunting and fishing, which activities, it argues, are inconsistent with Dr. G's opinion. The claimant maintained that he still had disability at least as of the hearing. Whether the claimant had disability was also a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, August 19, 1993. While the evidence was in conflict on this question and another hearing officer may well have reached different conclusions about how long disability existed in this case, we decline under our standard of review to reweigh the evidence or substitute our opinion as to what facts have been established for that of the hearing officer. Rather, we find the evidence sufficient to support the findings of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge