

APPEAL NO. 990557

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 8, 1999. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that he did not have disability. The claimant appeals this determination, contending that it is contrary to the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a driller on an oil rig. He sustained a prior work-related low back and left hip injury on (prior date of injury). The diagnosis was herniation at L5-S1 with left-sided sciatica. Treatment included sciatic nerve block injections. Surgery was discussed, but declined by the claimant. According to the claimant, he essentially recovered from this injury and remained pain free for the two years preceding \_\_\_\_\_. On that day, he said, he was carrying pipe with the assistance of Mr. G. He testified that when he laid the pipe down, he felt a burning sensation in his left hip. He continued working his full duties. On November 20, 1998, he was told that he was "being let go." When he went to the office to find out why, he said, he was told that a new crew with more seniority was taking over the rig, but that there would be another job for him in a few days. At this point, according to the claimant, he reported his injury and was told to fill out an accident report. He admitted that he knew he was supposed to report an injury when it happened, but did not do so in this case because he feared this would cause him to lose his job. His listed Mr. G as a witness to the accident, but denied that he told Mr. G what to say.

Mr. G testified that he submitted a written statement in which he said that he was helping the claimant move piping when the injury occurred. He testified that the claimant asked him to make this statement, but that what he said in the statement was not true. He wrote a second statement, which he said was true, that he did not see the claimant injure himself. In yet a third recorded telephone conversation, he said he could not recall the incident where claimant said he injured himself and his only awareness of an injury was that the claimant said he was injured.

The claimant had the burden of proving that he injured himself as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The aggravation of a prior injury can be a new compensable injury, provided there is some worsening or enhancement of the underlying condition and not a mere recurrence of symptoms. Texas Workers' Compensation Commission Appeal No. 93866, decided November 8, 1993. Whether an aggravation of a prior injury or a new injury occurred is generally a question of fact for the hearing officer to determine. In a series of findings of

fact, the hearing officer determined that the claimant had a preexisting back condition, had always suffered some discomfort from this, and that on \_\_\_\_\_, he "exacerbated his pain . . . but did not suffer a new injury." Finding of Fact No. 8. The hearing officer also made two specific findings in support of his conclusion that the claimant did not sustain a compensable injury on \_\_\_\_\_. These included a finding that the claimant's "previous MRI" on November 13, 1992, in connection with his earlier injury, showed a disc protrusion, with impingement of the S-1 nerve root, while the MRI after the current claimed injury showed disc protrusion but with no nerve root impingement. Findings of Fact Nos. 5 and 6. In his appeal, the claimant contends that these findings were dispositive to the hearing officer, but that they incorrectly related what the two MRIs showed. The claimant thus argues that "[s]ince the Hearing Officer found no injury on the basis of the MRI studies, the findings and conclusion in regard to an injury should be reversed and the case remanded."

The reference to an MRI of November 13, 1992, in Finding of Fact No. 6 appears to be in error. An MRI of October 7, 1992, was reported as showing a central disc bulge at L5-S1 without compression of the thecal sac. There was, however, in evidence a CT scan of November 13, 1992, which disclosed herniation at L5-S1 "with slight compression of the S1 nerve root bilaterally . . . ." This latter finding of nerve root compression was consistent with complaints of left-sided sciatica and injection therapy. In a report of February 7, 1993, Dr. D, the treating doctor, noted that the CT scan showed compression of the S1 nerve root. A lumbar MRI taken on November 25, 1998, again showed protrusion at L5-S1 with compression of the thecal sac. No mention is made of nerve root compression. In a letter of December 14, 1998, Dr. D comments that the earlier MRI showed no thecal sac compression, while the latter MRI did.

The claimant's appeal appears to hinge on whether the hearing officer correctly read the two MRIs. We agree that Finding of Fact No. 6 contains an error when it refers to an MRI on November 13, 1992, when, in fact, the test was a CT scan. As pointed out above, despite the error in the name applied to the test, the results were correctly stated. We cannot agree that this simple misnaming of the tests with no confusion indicated about the results of the tests constitutes grounds for reversal of the decision and order. In addition, we are unwilling to conclude that these test results were the only basis for the decision of the hearing officer in light of all the other medical evidence which included detailed records on the prior injury and course of treatment. We will reverse a factual determination of a hearing officer only if that determination 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 sufficient to support the determination that the claimant did not sustain a new compensable injury on \_\_\_\_\_.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

Alan C. Ernst  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Susan M. Kelley  
Appeals Judge