

APPEAL NO. 991210

On April 30, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether the appellant (claimant) sustained a compensable injury on _____; and (2) whether claimant has had disability. The claimant requests that the hearing officer's decision that he did not sustain a compensable injury on _____, and that he has not had disability be reversed and that a decision be rendered in his favor on both issues. The respondent (carrier) requests affirmance.

DECISION

Affirmed.

Claimant, who is 48 years of age, testified that prior to (prior date of injury), he had worked for (employer), for six months to a year; that on (prior date of injury), while working for employer, he injured his back when he fell from a water tank; that he treated with Dr. D, D.C., for that injury; that he received workers' compensation benefits for his injury of (prior date of injury), and was off work for that injury; that Dr. D released him to return to work in January 1998; that employer had laid him off work due to a slowdown; that when he was released to return to work he went to work for a swimming pool company in 1998 doing clean-up work and grinding edges of pools; that he last saw Dr. D for his (prior date of injury), injury in May 1998; that he worked for several weeks in the summer of 1998 for another drilling company; and that a few weeks before _____, he went back to work for employer.

Claimant testified that he was working the 3:00 p.m. to 11:00 p.m. shift for employer on a drilling rig on _____; that on that day he and GR tried to get an old liner weighing 150 to 300 pounds out of a pump; that he, GR, and other crew members then went onto the floor to fix a compressor; that he was sent back down to work on the pump by himself; that he managed to get the old liner out of the pump; that the old liner fell into a drainage ditch; that he picked up the old liner by himself and set it on the skid of the pump to see if the gaskets on it could be used for the new liner; that when he picked up the old liner he strained his lower back and thought he had pulled a muscle; that there were no witnesses to that incident; that after the gaskets were put on the new liner, he and GR put the new liner in the pump; that he worked the rest of his shift on _____ but his back pain got worse and he told GR about it; and that later that evening he told the driller, KN, that he thought he had pulled a muscle lifting the old liner.

Claimant said that on (a day after date of injury) he was sore. He said he worked for several hours on (a day after date of injury) but that when he was told that pipe would have to be removed from the hole, he told KN that he was not going to do that because he did not want to injure his back any further; that the employer's safety man, KB, was called; that KB took him to a medical center; that x-rays were taken at the medical center and he was

prescribed pain medications and was told to stay home for several days; that he did not get better and returned to the medical center about a week later; that he then went to Dr. D, who gave him chiropractic treatment; that he had an MRI done which showed a bulge at L3-4 that was not shown on an October 1997 MRI; that Dr. D took him off work; that Dr. D released him to return to work on March 5, 1999; and that since then he has been working full time for the pool company doing what he had been doing for that company in 1998 at less wages than he was making when working for employer.

GR stated in a written statement that he did not see claimant get hurt, that he and claimant put the liner on the pump, and that claimant told him that if GR could get \$400.00 a week for staying home, GR would do it too. KN stated in a written statement that claimant told him on (a day after date of injury) that he had hurt his back the day before. CI, the toolpusher on the drilling rig, stated in a written statement that claimant did not say anything about being hurt until the next day after he had worked for five hours. In a recorded statement, KN stated that on _____ the liner was changed on the pump, that claimant's duties as a derrick hand included taking care of the pump, that the liner weighs 150 pounds, and that on (a day after date of injury) claimant reported that he was injured on _____. KB testified that on the way to the medical center on (a day after date of injury) claimant told him that he was injured lifting the new liner and putting it into the pump. Claimant testified that he indicated on the employer's "No Injury Certification" report of _____, that he had not been injured on that date because he thought on that day that he only had a muscle pull and that he would get over it.

Dr. R reported that an MRI of claimant's lumbar spine done on October 30, 1997, showed a disc protrusion at L5-S1, a disc bulge at L4-5, and no evidence of a disc protrusion at the upper three lumbar intervertebral discs. Dr. B examined claimant on November 12, 1997, and reported that lumbar spine x-rays showed degenerative disease at L4-5 and some disc space narrowing at L3-4 and reviewed the MRI report of Dr. R. Dr. B opined that when claimant fell off the water tank in (prior date of injury) he suffered a lumbar contusion and sprain and he recommended that claimant seek lighter work "given the degenerative changes in his lumbar back."

The medical center that KB took claimant to on (a day after date of injury), for the claimed injury of _____, reported that x-rays done on (a day after date of injury) showed degenerative changes in the spine and osteoarthritis in the facet joints. An October 19, 1998, record from the medical center reflects that claimant returned there for complaints of back pain that claimant said was from a job-related injury. Dr. D saw claimant on October 20, 1998, and he wrote that claimant hurt his back when he lifted a pump liner by himself on _____. Dr. D provided chiropractic treatment to claimant's back for several months after the visit of October 20th and recommended that claimant be excused from work. Dr. D wrote in December 1998 that claimant had seen Dr. C for a surgical consultation in November 1997 for the injury of (prior date of injury); that Dr. C had not recommended surgery; that he had last treated claimant for the (prior date of injury) injury in May 1998; that claimant returned to his office on October 20, 1998, for treatment of a new work-related

injury that occurred on _____; and that in his opinion claimant sustained a new injury on _____, when he lifted the liner and felt back pain.

Dr. R reported that an MRI of claimant's lumbar spine done on January 4, 1999, showed degenerative disc disease at L3-4, a disc herniation at L5-S1, a disc bulge at L4-5, and a disc bulge at L3-4. Dr. R stated that, compared to the MRI done in October 1997, there was a redemonstration of the disc herniation at L5-S1 and the disc bulge at L4-5, but that "there is also diffuse disc bulge at L3-L4 level which was not evidence [sic] on the previous study." Dr. D wrote in January 1999 that the January 1999 MRI showed a disc bulge at L3-4 that was not evident on the October 1997 MRI and that in his opinion the new disc bulge is the result of claimant's injury sustained on _____, and is the source of his present symptoms. Dr. D also wrote that his clinical findings, which he listed in a report, supports his position that the _____, injury is unrelated to the injury of (prior date of injury). Dr. D released claimant to regular duty on March 5, 1999.

Dr. RA examined claimant and reviewed medical reports in April 1999 at the request of the Texas Workers' Compensation Commission and he wrote that the x-ray changes that had been reported are not associated with a new injury because they predate the _____ injury and that he believes that claimant reinjured himself with a new injury in _____ and that his opinion is based on information supplied to him, including the mechanism of injury.

Dr. S reviewed medical reports at carrier's request but did not examine claimant and he reported in February 1999 that it had been reported that the L3-4 bulge was not evident on the October 1997 MRI, but that he felt that that bulge is due to claimant's age and wear and tear and in all probability was present before the injury of _____.

The hearing officer found that claimant did not injure his lower back while working as a derrick hand on _____, nor did he aggravate a preexisting lower back condition, and that claimant's inability to work, if at all, from _____, to the date of the CCH, was not caused by a work-related injury or aggravation of a preexisting condition on _____. The hearing officer concluded that claimant did not sustain a compensable injury in the course and scope of his employment on _____, and that claimant does not have disability. Claimant contends that the evidence shows that he did sustain a new injury on _____; that the January 1999 MRI finding of a disc bulge at L3-4 is evidence of that injury; and that he aggravated his condition on _____.

Claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An aggravation of a preexisting condition is an injury in its own right. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). There is conflicting evidence in this case regarding the issue of whether claimant sustained a compensable injury on _____. As the finder of

fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision that claimant did not sustain a compensable injury on _____, is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury having been sustained on _____, claimant would not have disability, as defined in Section 401.011(16), as a result of that claimed injury. Thus, the hearing officer did not err in deciding that claimant has not had disability.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge