APPEAL NO. 991864

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On July 23, 1999, a hearing was held. He held the record open for receipt of added medical records until July 30, 1999, after which time he determined that respondent (claimant) sustained a compensable lumbar spine injury on _____, and had disability from _____, through July 23, 1999. Appellant (carrier) asserts that claimant had been injured on a hunting trip approximately one month prior to _____; it also states that there is "newly discovered evidence" because "immediately following" the hearing "some . . . coworkers of claimant mentioned" that claimant had a second job at the time, adding, "[t]his suggests the further possibility that claimant was injured on another job. . . ." (Emphasis added.) Carrier added that "this evidence . . . would have produced a different result." The claimant did not respond to this appeal.

DECISION

We affirm.

Carrier's assertion that newly discovered evidence requires a remand is rejected. No statements are provided setting forth the specifics of what the newly discovered evidence is. An assertion is made on appeal that some coworkers (unnamed--there were five coworkers who testified at the hearing) said "following the hearing" that claimant had a second job at the time of the alleged injury. No assertion is made that any unnamed coworker even said that the other job was demanding physically, much less that claimant had sustained an injury at this other job. As stated, there are no documents, written statements, affidavits or any other evidence provided or referenced. Further, carrier states that "this" (apparently referencing the second job) "suggests" the further "possibility" that there was an injury "on another job." Carrier then cites a case, Texas Workers' Compensation Commission Appeal No. 951051, decided August 16, 1995, in which "newly discovered evidence" was considered by the hearing officer at a hearing in regard to a dispute of compensability raised by that carrier after a neighbor of the claimant called the carrier stating that the claimant therein had made an admission that the injury occurred other than on the job. Appeal No. 951051 does not control. Carrier herein said that it had previously interviewed "all of claimant's co-workers" so "this evidence was not due to a lack of diligence," but carrier did not say why, in its interviews of coworkers, it never asked whether claimant had a second job; it did not say that the "co-workers" had misrepresented this point in prior interviews and thereafter provided a different account after the hearing. Carrier then states that "this evidence" (apparently the possibility that claimant had a second job) "would have produced a different result." We disagree. Evidence indicating that claimant had a second job, without more, is not so material that it would probably produce a different result if it had been considered at the hearing. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

Claimant worked for (employer) on _____. He testified that he hurt his back while pushing a bale of feathers at work, before midnight, on _____ during his shift that

began on _____ and was to end on _____. These bales were described as containing compressed feathers and measuring about two feet by three and one-half feet. Claimant said he slipped, apparently on a piece of steel, and fell back, catching himself with his hands. He further stated that he had a "real bad feeling" in his low back. He talked to his supervisor, Mr. T, who then took him home. Claimant went to an emergency room later that day (_____) and received little care. (The history recorded said that claimant had slipped at work "last night" and said his symptoms were "abrupt.") He returned, again within a day, and was admitted; he then had emergency spinal surgery on February 11, 1999. The admission history on February 10, 1999, says that claimant's "symptom was abrupt, date of occurrence was yesterday, time of occurrence was 21.00"; it added that claimant's daughter said that he was hurt "after falling from standing position on back." Claimant was said to have returned after his initial presentation because of urinary incontinence. The operative report states that Dr. O operated at L4-5 to dissect an extruded disc. It states that the L5 nerve root had been trapped.

Claimant agreed that he had taken a vacation in early January 1999 to (City) at which time he injured his left knee, but not his back. Since he returned to work on January 10, 1999, he said he had limped.

The plant manager, Mr. V, testified that bales are stacked by forklift right beside the machines which wash the feathers; he added that he had never seen anyone move the bales by hand because a cart is provided. Mr. T testified that on _____, claimant was "pushing bales," adding that he was helping him to "push bales," which he later said was done, "with your body, with your hands." He said he took claimant home during that shift because claimant said he felt bad; he said that claimant did not say that he hurt his back pushing bales at work. He also said that he had never taken claimant home before and that claimant never looked like he did that night.

Another employee, Mr. A, said that claimant told him he was carrying a deer on his shoulders and jumped over a stream and hurt himself. He added that claimant said he hurt himself while hunting. On cross-examination, however, Mr. A added that claimant said he had hurt his leg and stated that claimant never said that he hurt his back while hunting. Ms. R testified that claimant was limping at work even before he went on vacation in January to City. She added that claimant appeared to be hurting on _____, at work.

No one witnessed claimant's fall at work on _____, but several coworkers said that claimant had limped prior to _____.

Dr. O provided a letter dated April 15, 1999, to claimant's lawyer in which he said:

> It was the examiner's feeling that the acutely ruptured disc with resulting cauda equina was directly related to the accident as described in your letter in which he was pushing a hundred pound bale of feathers. Within twenty-four hours of that accident, the patient developed his acute cauda equina syndrome. The relationship medically is clear cut and would not relate to any event that occurred in City one month before.

In addition, other medical records were not inconsistent with Dr. O's diagnosis. Dr. D, who read the MRI on _____, said that there was "compression of the cauda equina at the L4-5 level due to disc herniation." Dr. C, who provided a consult on February 16, 1999, also provided a history of "pushing something at work" and said that claimant had "cauda equina syndrome secondary to extruded disk at L4-5" and also had a "lower motor neuron lesion, flaccid bladder." Dr. Mc said on March 24, 1999, that a myelogram on February 10, 1999, "showed complete blockage to the flow of myelographic contrast at the L4-5 due to disc herniation." (Emphasis added.) Dr. Mc also assessed cauda equina syndrome "with numbness and tingling down bilateral lower extremities . . . ."

We agree with carrier that claimant was injured before _____. However, there is no evidence provided that the prior injury was to claimant's back, as opposed to his left leg, or, more particularly, to his left knee. Just because there is evidence of a prior injury to the left knee does not preclude a determination that claimant injured his low back on _____. The testimony of claimant that he injured his back at work moving bales, that of Mr. T that claimant was moving bales with his body on the date in question, that of Mr. A that claimant told him he had hurt his knee on vacation but did not say he had hurt his back, and that of Dr. O, along with other medical evidence, sufficiently support the determination that claimant sustained a compensable lumbar injury on _____.

The claimant and the medical evidence also sufficiently support the determination of disability during the time period specified by the hearing officer. There was no evidence that disability began later or ended earlier.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Alan C. Ernst
Appeals Judge