

APPEAL NO. 991929

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 July 27, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on (current date of injury), and whether the appellant's (carrier) contest of compensability was based on newly discovered evidence thus allowing the carrier to reopen the issue of compensability. The hearing officer found that the claimant sustained a compensable injury and that the contest of compensability was based on newly discovered evidence. Carrier only appeals the determination that the claimant sustained a compensable injury urging that there was insufficient evidence to support either a specific incident injury or a repetitive trauma injury. No response is on file.

DECISION

Affirmed.

The claimant, who speaks no English, testified through an interpreter that he injured his back on (current date of injury), while working as a construction laborer. He stopped work that day, was sent to a doctor by the employer, underwent an MRI which showed an impression of a broad-based disc bulge and posterior spondylosis at L4-5 resulting in moderate neural canal stenosis worsened from the prior examination, and subsequently had spinal surgery. It was shown that he had a prior back injury in (1st date of injury), the MRI of which showed a moderate-sized central disc herniation at L5-S1. Although surgery had been recommended in 1997, none was performed and the claimant stated he got better and returned to work in 1998. A comparison between the two MRIs was rendered by Dr. Wilson (Dr. W), who treated the claimant and stated that the readings clearly indicate a new injury.

The hearing officer found that the claimant injured his lower back on (current date of injury), while lifting boxes of tile in the course and scope of his employment. Carrier urges that the position advanced by the ombudsman at the hearing in assisting the claimant was that his back injury was a result of repetitive job activity and that there was no evidence of a specific incident injury as found by the hearing officer. While it may be true that the testimony of the claimant was somewhat confusing, possibly because of a language barrier, we cannot conclude from our review of the evidence that there was no evidence to support the hearing officer's finding or that it was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. In this regard, we note the claimant testified that on (current date of injury), he could no longer work because of his back, and that in response to questions from the ombudsman and the hearing officer concerning how he injured himself he stated:

I injured myself with some boxes of tiles. They were quite heavy. We were putting tile in a house.

The following questions and answers occurred at another point:

A. The day I felt the pain, I felt it in my leg, and it was very hard to handle.

Q. Were you at work that day that you felt the pain in your leg?

A. Yes.

Q. Was it in the morning or the afternoon?

A. Morning.

Q. What had you been doing just immediately prior to your leg starting hurting and you reporting this injury?

A. Lifting the—we were going to lay tiles in a house.

Q. Had you moved any of the tiles into the house that day?

A. A few.

Q. How heavy were the tiles you were lifting?

A. Around 80 or 90 pounds.

The claimant stated he reported this to his supervisor, did not work anymore and went to the doctor. While at other places the claimant indicated that the heavy work he did over a period of time was also the cause of his injury, we cannot conclude there was insufficient evidence of the carrying of heavy tile on (current date of injury), causing the injury he suffered on (current date of injury). In sum, we conclude there is sufficient evidence to support the decision of the hearing officer and the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge