

APPEAL NO. 000143

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 January 3, 2000. The hearing officer determined that the respondent's (claimant) compensable injury of _____, included a low back injury. The appellant (carrier) appeals this determination, contending that it is against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant. A separate issue of timely dispute of the compensability of a low back injury was resolved in favor of the carrier by stipulation of the parties.

DECISION

Affirmed.

The claimant worked as a department manager for a (store). She testified that on _____, as she was climbing down a ladder at work carrying a box of inventory, she missed the bottom step, "went back," and hit the floor with her left heel causing pain in her left calf. She was taken to an emergency room where x-rays of the knee were taken and she was given a knee brace. She said she told the doctor that her knee was not the problem and did not understand why the diagnosis involved the knee. She was then referred to Dr. S, who in an Initial Medical Report (TWCC-61) of May 4, 1999, diagnosed a knee or leg sprain/strain and prescribed physical therapy. Dr. S's later reports described the injury as a calf strain. Not until a visit with Dr. S on July 27, 1999, is there mention that she "is starting to look like it is radicular pain from her back." An MRI August 4, 1999, showed herniation at L5-S1 and bulging at L4-5. Dr. S did not otherwise mention causation in his report. Dr. H, a second opinion spinal surgery doctor, wrote on September 23, 1999, that the claimant had leg and back pain since _____, "when she suffered a fall at work." Prior to the MRI, Dr. S completed a Report of Medical Evaluation (TWCC-69) in which he certified maximum medical improvement as of May 11, 1999, and assigned a zero percent impairment rating.

The claimant had the burden of proving that she injured her low back in the incident at work on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer considered the evidence and made the following findings of fact and conclusion of law which have been appealed by the carrier:

FINDINGS OF FACT

2. On _____, Claimant missed the final step of the ladder she was descending and hyperextended her back as she fought to retain her balance.

3. The hyperextension of her back resulted in a herniation of the disc at L5-S1 and a bulging disc at L4-5.
4. Claimant's complaints of pain in her left calf are consistent with nerve root impingement at the L4-5 and L5-S1 levels.

CONCLUSION OF LAW

4. Claimant's low back injury, a herniated disc at L5-S1 and a disc bulge at L4-5, are related to or due to the _____ compensable injury.

In its appeal, the carrier asserts that the issues were whether the claimant sustained a repetitive trauma injury, the date of injury, and whether the claimant timely reported the injury. The claimant's theory of compensability was that she was injured, not by repetitive trauma, but by the single act of missing the ladder step. The benefit review conference (BRC) report does not reflect otherwise, nor were there reported issues of date of injury or timely reporting. At the CCH, the carrier agreed that the issues were those contained in the BRC report.

The carrier's appeal is otherwise premised on the assertion that given the delay in the appearance of complaints of back pain in the medical records, expert evidence was required in this case to prove causation. The cause of a claimed injury may be proved by the claimant's testimony alone, if found credible by the hearing officer, in those cases where matters of causation are within ordinary experience. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Cases of so-called attenuated causation, that is, where there is a substantial passage of time between the injury and the onset of symptoms, may be situations where expert evidence is necessary or a hearing officer may be persuaded one way or the other by the presence of or lack of such evidence. Texas Workers' Compensation Commission Appeal No. 941303, decided November 10, 1994. In the case we now consider, the claimant testified that her symptoms were primarily in her calf and her doctor, after the MRI, explained that the source of the calf symptoms was likely the lower back. Thus, we question whether this is properly a case of attenuated causation or of delay in arriving at a proper diagnosis. In any event, the hearing officer could infer from the claimant's testimony about how the accident occurred and how she "went back" as her heel struck the floor that she in fact hyperextended her back and that this, not some unknown intervening event, caused the low back problems identified in the MRI. In addition, we believe the statements of Dr. S and Dr. H also provided that "minimal level of medical proof" sought by the carrier in its appeal to support the claimant's theory of causation. 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 determinations that the claimant sustained a compensable low back injury on _____.

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

Philip F. O'Neill
Appeals Judge