

APPEAL NO. 001570

On June 14, 2000, 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.* The hearing officer resolved the disputed issues by deciding that respondent (claimant) sustained a compensable low back injury in the course and scope of his employment on _____, and that claimant had disability as a result of the compensable injury from May 1, 1998, to August 30, 1998. Appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor, or, in the alternative, that the case be remanded to the hearing officer. Claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant testified that he had a work-related low back injury on _____, when he slipped in grease and fell. Dr. C reported that a CT scan done in July 1990 showed a minimal L5-S1 disc bulge without radiographic suggestion for neural compression. Dr. CO reported that a myelogram done in July 1990 showed a slight midline bulge of a lumbosacral disc. In a July 1990 report, Dr. F, claimant's treating doctor for the 1990 injury, gave a final diagnosis of disc bulge or rupture at the L5-S1 level on the left. Dr. F wrote that a 1990 MRI showed a disc herniation at L5-S1. The 1990 MRI report was not in evidence. In October 1990, Dr. P wrote that the June 1990 MRI "suggests some modest physiologic bulge at the L5-S1 level" and that the CT scan "also suggests some physiologic bulge at L5-S1 interval." Dr. P then stated that "this, however, is not obliterating the nerve root sleeves and does not seem to be evidencing substantial epidural pressure on the anterior thecal disc." Dr. P diagnosed claimant as having degenerative disc disease at L5-S1.

Claimant testified that in 1995 he had a work-related low back injury when pulling a pallet jack and that he was off work for that injury for about six weeks. He said that his low back soreness would come and go but did not prevent him from working after he was released to return to work.

In _____, claimant was working for employer's client company as a sanitation helper. There was some confusion regarding the date of the claimed _____ injury. Claimant initially testified that it occurred on _____, but later said that the injury occurred on _____. He said that while performing his work duties, he felt a pull in his back while reaching overhead to put heavy boxes on a shelf while he was on a ladder at work. He said that he notified employer of the injury on May 19, 1998, and that employer sent him to Dr. H. Dr. H diagnosed a lumbar strain and placed claimant on restricted work duties. Claimant said that employer told him that it did not have light-duty work available for him. Claimant indicated that after his injury in _____, he did not work again until August 31, 1998, because of back pain.

Claimant began treating with Dr. T, on June 20, 1998. Dr. T noted the history of the _____ injury as occurring when claimant felt a pull in his back while reaching overhead with boxes while on a ladder. Dr. T issued a series of off-work slips. Dr. FR reported that claimant's lumbar MRI done on September 23, 1998, showed a disc protrusion at L5-S1 consistent with a small herniation resulting in contact and mild compression of the left S1 nerve root.

Dr. CM reviewed claimant's medical records at carrier's request and opined that claimant's current complaints appear to be a continuation of his 1990 injury and that it did not appear that claimant suffered an injury in _____ with further damage to the physical structure of his body.

Dr. T wrote in February 1999 that claimant has a disc herniation at L5-S1 that he did not have in 1990, noting that Dr. P had reported in October 1990 that the 1990 CT scan had only shown a disc bulge, and that claimant had further physical damage as a result of the 1998 injury. Dr. T referred claimant to Dr. L who wrote that claimant had a new injury of the lumbar spine on _____. The Texas Workers' Compensation Commission apparently sent claimant to Dr. FU, who wrote in January 2000, that claimant had recovered from his _____ injury when he saw claimant in November 1999.

Claimant said that he returned to work working for another employer on August 31, 1998. SS, who works for employer, testified that claimant reported his _____ injury on May 19, 1998.

Claimant had the burden to prove that he was injured in the course and scope of his employment and that he had disability. The hearing officer decided that on _____, claimant sustained a compensable low back injury while in the course and scope of his employment with employer and that claimant had disability as a result of his compensable injury from May 1, 1998, through August 30, 1998. Carrier contends that claimant did not sustain a new injury in _____. There is conflicting evidence as to whether claimant sustained damage or harm to the physical structure of his body while lifting boxes overhead at work in _____. The hearing officer found that claimant did sustain harm to his low back on or about _____, in the course and scope of his employment. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's decision that claimant sustained a compensable low back injury on _____, and that he had disability from May 1, 1998, through August 30, 1998, is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Philip F. O'Neill
Appeals Judge