

APPEAL NO. 001824

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 13, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable lumbar sprain/strain on _____, and that the contest of compensability by appellant (carrier) was timely and adequate. Carrier appealed the injury determination on sufficiency grounds. The appeals file does not contain a response from claimant. The parties did not appeal the determination regarding carrier's contest of compensability.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury on _____. Carrier asserts that the medical evidence shows that claimant experienced a mere reoccurrence of symptoms from his prior _____ back injury, rather than a new injury. The hearing officer determined that claimant's MRI reports may not show much of a difference, but that claimant did sustain a soft tissue injury.

The hearing officer discussed some of the evidence in his decision and order. Briefly, claimant testified that he felt a sharp pain while sweeping at work and that he could not get out of bed for three days after this injury. It was undisputed that claimant sustained a prior back injury in _____. Claimant said he was off work six months for that injury and that his impairment rating was seven percent. He testified that he had then gone back to work and had not had any problems working for ten months thereafter. The applicable law regarding assertion of aggravation and new injury and our appellate standard of review are stated in Texas Workers' Compensation Commission Appeal No. 000077, decided February 28, 2000.

Here, the hearing officer reviewed the evidence and determined that claimant did sustain a new, soft-tissue back injury on _____. Sprains and strains can be compensable injuries. See Texas Workers' Compensation Commission Appeal No. 93956, decided December 8, 1993. What was or was not shown on an MRI was merely a factor for the hearing officer to consider in making his fact determinations in this case. Such testing does not rule out the presence of a soft tissue injury. Further, the hearing officer decided what weight to give to the various medical reports and to claimant's testimony. We have reviewed the evidence in this case and we conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We note that, in considering the issues in this case, we did not consider the evidence sent to the Appeals Panel for the first time on appeal because it did not meet the requirements for newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge