

APPEAL NO. 002741

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 November 7, 2000. The hearing officer resolved the disputed issues of extent of injury, timely contest of injury, and disability by deciding:

1. The respondent's (claimant herein) compensable injury included a left paracentral disc protrusion at the L5-S1 level.
2. The appellant (carrier herein) did timely contest the compensability of the claimant's left paracentral disc protrusion at the L5-S1 level.
3. The claimant had disability beginning on December 6, 1999, and continuing through the date of the CCH.

The carrier appealed, contending that there was insufficient evidence presented at the CCH to establish that the claimant's herniated disc was the result of her _____, compensable injury, rather than a result of vacuuming at home on November 21, 1999. The carrier implicitly raises a question concerning whether the claimant's _____, compensable injury resulted in disability beginning on December 6, 1999. The claimant responds that there is sufficient evidence in the record to support the relationship between her compensable injury and her herniated disc and points to specific medical evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

There was conflicting evidence presented at the CCH on the appealed issues. The claimant testified that on _____, she bent down at work to pick up a bundle of cabinet doors and felt a burning and pulling sensation in her back. The claimant underwent medical treatment for this injury, but did not have an MRI performed until after an incident at home on November 21, 1999, when she felt pain in her back after vacuuming at home. This MRI showed a herniated disc and the claimant later underwent spinal surgery for this. The claimant testified that she continued to have the same type of pain she experienced after the _____, injury at work as she had both before and after the vacuuming incident at home. The claimant testified that due to her back injury she was unable to work from December 6, 1999, through the date of the CCH. Dr. D, the claimant's treating doctor, and Dr. W, the surgeon who operated on her spine, both relate the claimant's herniated disc to her _____, injury. Dr. We, a carrier peer review doctor, opines that based upon her review of the medical records the vacuuming incident was a new injury that caused the claimant's herniated disc. The hearing officer's finding that the claimant's compensable injury included her left paracentral disc protrusion is supported by medical evidence from Dr. D and Dr. W. There was contrary evidence from Dr. We.

The question under our standard of review was whether the hearing officer's determinations were 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). Applying this standard, we find sufficient evidence to support the hearing officer's finding that the claimant's compensable injury of _____, included a left paracentral disc protrusion at the L5-S1 level.

The carrier's implicit challenge of the hearing officer's resolution of the disability issue hinges on its argument that the claimant's injury did not include a left paracentral disc protrusion of the L5-S1 disc. Having rejected the carrier's attack on the hearing officer's extent-of-injury finding, we likewise reject its challenge of the hearing officer's determination regarding disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeal Judge

Robert E. Lang
Appeals Panel
Manager/Judge