

APPEAL NO. 002880

Following a contested case hearing (CCH) held on November 21, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the respondent (claimant herein) suffered a compensable injury on _____, and as a result had disability from April 17, 2000, through the date of the CCH. The appellant (carrier herein) files a request for review arguing that the claimant did not suffer an injury on _____, but that his problems are a continuation of an injury he suffered on _____. The claimant responds that the hearing officer's factual findings are sufficiently supported by the 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.

This case turns on whether the claimant suffered a new compensable injury on _____, or is suffering a continuation of the injury he previously suffered in _____. This is an issue of fact. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Both parties recognize this. The fact that the claimant suffered a new injury is supported by the testimony of the claimant as well as medical reports from Dr. Gu and Dr. Go. While the carrier argues that there was no difference between the MRI examinations done after the _____ injury and the MRI performed after the _____, injury we note that radiographic findings are not necessary to prove an injury and that the carrier's theory regarding the MRIs is made through argument rather than evidence. In any case, it was the province of the hearing officer to resolve any conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge