

APPEAL NO. 011263
FILED JULY 19, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing on remand was held on May 1, 2001. The hearing officer who was substituting for the prior hearing officer who is no longer with the agency. On the matter remanded, the hearing officer found that the respondent (claimant) sustained a herniated lumbar disc on _____, and had disability for the period from June 17, 2000, through March 1, 2001.

The appellant (carrier) appeals and argues that there is no evidence to tie the herniated lumbar disc with any occurrence on _____ or to prove that the claimant sustained "an injury" on that date. The carrier also seeks a review of the disability determination, and further argues that the hearing officer miscast the issue to be determined on remand. The claimant responds that the decision of an injury and disability is supported by the record.

DECISION

Affirmed.

We cannot agree that the hearing officer did not properly decide the remand--the decision in question is responsive to our concern as expressed when the case was remanded.

The hearing officer did not err in finding that the claimant's injury included a herniated lumbar disc. As set out in our previous decision, the claimant contended that he hurt his wrist and back on _____ while he was unloading a heavy carton from his delivery truck at a customer's location. He said that as the heavy box fell, he was twisted toward the ground and felt immediate pain through his hip. He said that when he began driving again, his foot was numb. The claimant nevertheless worked the rest of the day, believing that his pain would resolve. The claimant was treated on June 19 and taken off work. As set forth in our previous decision, there was conflicting evidence; to the effect that the claimant had prior degenerative conditions, but he also had a right-side lumbar herniation. At the remand hearing, an operative report was admitted showing that the claimant had lower back surgery on April 9, 2001.

The fact that the claimant may have had degenerative disc disease is not conclusive on whether he sustained a compensable injury. It is axiomatic, in case law having to do with aggravation, that the employer accepts the employee as he is when he enters employment. Gill v. Transamerica Insurance Company, 417 S.W.2d 720, 723 (Tex. Civ. App.-Dallas 1967, no writ). An incident may indeed cause injury where there is preexisting infirmity where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). However, the compensable injury includes these enhanced effects, and, unless a first condition is one for which compensation is payable under the 1989 Act, a subsequent carrier's liability is not

reduced by reason of the prior condition. St. Paul Fire & Marine Insurance Company v. Murphree, 357 S.W.2d 744 (Tex. 1962). If the prior condition is compensable, the appropriate reduction for a prior compensable injury must be allowed through contribution determined in accordance with Section 408.084. The hearing officer's conclusion that the incident of June 16, 2000, included a herniated lumbar disc is supported by the evidence, as is his determination that the claimant had disability therefrom for the period stated.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge