

APPEAL NO. 011694  
FILED SEPTEMBER 10, 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 (CCH) was held on July 3, 2001. The hearing officer held that the respondent (claimant) sustained a new injury on \_\_\_\_\_, while working for an employer insured by the appellant (carrier A). The respondent (carrier B) had insured the same employer at the time of the claimant's previous injury on June 13, 2000. The hearing officer also found that the claimant had disability for the period from March 13, 2001, through the date of the CCH. Finally, the hearing officer found that the scope of the injury included the claimant's back and legs, but that the claimant did not sustain injury on \_\_\_\_\_, to his thoracic spine, cervical spine, or bilateral shoulders.

Carrier A, who was the insurance carrier for the employer on March 12, 2001, has appealed. It argues that the claimant's condition was merely the continuation of his previous injury. Carrier A also argues that there is no evidence of repetitive work performed by the claimant. It further argues that there is no evidence of leg injury or disability. The claimant responds that the decision is based on the record and should be affirmed. There is no response from carrier B.

DECISION

We affirm the hearing officer's decision.

We do not agree that the hearing officer erred in finding that the claimant had an aggravation injury to his back and legs, and had disability therefrom. The claimant testified that he had a back injury in June 2000, was found to be at maximum medical improvement and released back to work in late fall 2000, and had no medical treatment or problems until \_\_\_\_\_, when he hurt his back that morning while unloading boxes from a delivery truck. The pain radiated down his legs. His treating doctor, Dr. R, who also treated him for his June 2000 injury, testified that the claimant had sustained a new injury and that he suspected a compression fracture. Dr. R recommended an MRI, which had been denied by carrier A. Dr. R's diagnosis at this point was lumbar neuritis characterized by weakness or radiculopathy that could be caused by a herniated disc. He based this upon subjective complaints and objective clinical findings. Dr. R had taken the claimant off work; the claimant also testified as to his inability to work.

We do not interpret the claimant's theory of recovery as a repetitive trauma injury. Rather, the claimant claimed that the injury occurred at a date and time certain during an episode of lifting boxes. The claimant was not required to identify a single box in order to prove an accidental injury. See Texas Workers' Compensation Commission Appeal No. 002686, decided January 10, 2001; Texas Workers' Compensation Commission Appeal No. 951862, decided December 20, 1995. Thus, whether there is evidence of a repetitive activity performed by the claimant is not relevant to the claim.

All of the arguments made by carrier A have to do with the responsibility of the finder of fact to weigh the credibility, materiality, and relevance of the evidence. Section 410.165(a). A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). Testimony on incapacity need not be limited to experts; a jury may reasonably infer incapacity from circumstantial evidence or the competent testimony of lay witnesses. Green v. Texas Workers' Compensation Insurance Facility, 993 S.W.2d 839, 844 (Tex. App.-Austin 1999, writ denied).

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, 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). A carrier that wishes to assert that a preexisting condition is the sole cause of an incapacity has the burden of proving this. Texas Employers Insurance Association v. Page, 553 S.W.2d 98, 100 (Tex. 1977); Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1992. 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.

For these reasons, we affirm the hearing officer's decision and order.

The true corporate name of the appellant insurance carrier is **ONE BEACON INSURANCE COMPANY/AMERICAN EMPLOYERS' INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. J. FIELDS  
5910 NORTH CENTRAL EXPRESSWAY, SUITE 500  
DALLAS, TEXAS 75206.**

The true corporate name of the respondent insurance carrier is **CLARENDON NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**UNITED STATES CORPORATION COMPANY  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge