

APPEAL NO. 022664
FILED DECEMBER 9, 2002

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 September 18, 2002. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) compensable injury of _____, extends to and includes herniated discs at the L4-5 and L5-S1 spinal levels. The appellant (carrier) appeals, contending that the claimant was not credible and that causation was not established by expert medical evidence based on reasonable medical probability. The claimant responded, requesting affirmance.

DECISION

The hearing officer's decision is affirmed.

It is undisputed that the claimant sustained a compensable lower back injury on _____, when he bent over and picked up a 30-pound pipe-cutting saw. The claimant sought immediate medical attention for his injury. He has had continuing back and leg pain since his injury. An MRI performed in January 2001 revealed disc herniations at L4-5 and L5-S1. The claimant testified that he had immediate back pain when he picked up the saw and that he had no previous back problems. No medical records of prior back problems were in evidence. The carrier's peer review doctor testified that the claimant's MRI findings were chronic problems that preexisted his injury, but that it was possible that the claimant could have sustained the lumbar disc herniations when he bent over and picked up the saw. The hearing officer found that on _____, the claimant sustained damage or harm to the physical structure of his L4-5 and L5-S1 spinal discs and concluded that the compensable injury extends to and includes herniated discs at the L4-5 and L5-S1 spinal levels.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We disagree with the carrier's assertion that expert medical evidence based on reasonable medical probability was necessary to establish causation between the mechanism of injury in this case and the lumbar disc herniations. As a general rule, in workers' compensation cases the issues of injury and disability may be established by the testimony of the claimant alone. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). We do not view this case as coming within the exception to the general rule that would require expert medical evidence based on reasonable medical probability to establish causation due to the scientific or technical nature of the subject matter. See Texas Workers' Compensation Commission Appeal No. 021880, decided September 12, 2002; Texas Workers' Compensation Commission Appeal No. 012683, decided December 27, 2001. In addition, we note that, even if the claimant had a preexisting condition, the aggravation of the preexisting

condition due to a work-related injury would be compensable. Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex. App.-Amarillo 1999, no pet.); Peterson v. Continental Casualty Company, 997 S.W.2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet.).

We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge