APPEAL NO. 032773
FILED DECEMBER 1, 2003

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 September 17, 2003. With regard to the two issues before her, the hearing officer determined that the respondent's (claimant) _____, compensable (sprain/strain of the lumbar spine) injury extended to include a herniated disc at L5-S1 and lumbar degenerative disc disease, and that the compensable injury of _____, is a producing cause of the herniated disc and lumbar degenerative disc disease.

The appellant (self-insured) appeals the extent-of-injury issue, stating that "the claimant's injury in fact stems from a tree trimming incident of (date of intervening incident) which was an intervening incident." The claimant responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable sprain/strain injury of the lumbar spine on _____. The injury occurred when he jumped out of the cab of a fire engine, during the course of his duties as a captain in the self-insured's fire department. The claimant continued to have lower back and right leg complaints, saw a number of different doctors, had facet and epidural steroid injections, and eventually had an anterior approach diskectomy and interbody fusions with BAK cages L5 and S1. He continued to have problems as of the date of the CCH, diagnosed by the treating doctor, Dr. C, as spinal instability and lumbar degenerative disc disease.

The self-insured argued that all treatment after (date of intervening incident) has been due to an intervening injury occurring in that month. The self-insured based its assertion on notations by Dr. C that the claimant had "sustained re-injury following some tree pruning during which he either twisted his back or simply over worked himself." The medical evidence whether the claimant sustained a new nonwork-related injury or merely had a continuation of his original injury is in conflict.

The Appeals Panel has frequently noted that the burden is on the carrier to prove that the intervening event is the sole cause of the claimant's current condition. Texas Workers' Compensation Commission Appeal No. 000517, decided April 24, 2000, and Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994. In this instance the self-insured does not even argue that the tree-trimming incident is the *sole* cause of the claimant's injuries. The mere existence of an intervening event (tree-trimming incident) does not establish that the intervening event is the sole cause of the claimant's current condition, i.e. spinal instability and lumbar

degenerative disc disease. Whether or not the tree-trimming incident was the sole cause or whether the claimant's current condition is a continuation of his original injury is a factual determination for the hearing officer to resolve. She did so in the claimant's favor and that decision is supported by sufficient evidence.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge