

APPEAL NO. 001535

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 April 18, 2000. The record was kept open to allow a response from the treating doctor and to allow written closing argument by the parties, with the record closing on May 26, 2000. The issues were:

1. Does Claimant's [appellant] compensable injury include or extend to include an injury for pigmented villonodular synovitis [PVS] of the right knee?
2. Did Carrier [respondent] waive the right to contest compensability of the claimed injury for [PVS] of the right knee by not contesting compensability within 60 days of being notified of the injury?
3. Did Claimant have disability from 8-31-99 through 11-4-99?

With regard to those issues, the hearing officer determined that the claimant's compensable (right knee) injury does not include or extend to PVS; that the carrier had not waived the right to contest compensability of the PVS condition (based on Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3), which while discussed at some length at the CCH was not mentioned in the findings of fact or conclusions of law); and that the claimant did not have disability from August 31, 1999, through November 4, 1999, presumably the date the claimant reached maximum medical improvement (MMI) by operation of law (statutory MMI), pursuant to Section 401.011(30)(B).

The claimant appealed, essentially contending that Rule 124.3 should not be applied and that the body of law interpreting Rule 124.6 and Section 409.021 prior to March 13, 2000 should apply; that the recommended knee replacement surgery is for the "primary compensable injury" (not directly at issue here); and that the claimant had disability from August 31, 1999 (when he quit work because of knee problems), "through the statutory MMI date of 11-04-99." The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The carrier responds that since the claimant had not specifically disputed any of the hearing officer's 47 findings of fact, those findings "have become final"; that Rule 124.3(c) should be applied; that the medical evidence did not support that the PVS was part of the compensable injury; and, generally, that the hearing officer's decision should be affirmed.

DECISION

Affirmed in part and reversed and remanded in part.

First, we briefly address the carrier's response that since the claimant had not specifically disputed each or any of the hearing officer's 47 findings of fact, those "findings

of fact have become final.” As we held in Texas Workers’ Compensation Commission Appeal No. 000888, decided June 6, 2000, the pro se claimant specifically appealed the ultimate conclusions on which the hearing officer’s decision is based and we disagree that individual findings of fact can become final as long as the issue or hearing officer’s decision is appealed.

On the merits, the claimant had been employed as a serviceman for (employer) and on _____, slipped with his right knee bent backward. The parties stipulated that the claimant sustained a compensable injury to his right knee on _____. The hearing officer, both in her Statement of the Evidence and in her detailed findings of fact, enumerates the events which followed, including the results of a November 1997 MRI; surgery on January 5, 1998; a second surgery on March 23, 1998; the fact that Dr. A, the claimant’s treating doctor, added villonodular synovitis to the diagnosis in 1998; and the claimant’s continued problems throughout. The hearing officer commented:

This dispute apparently arose due [to] the history of treatment for the right knee injury, which according to Claimant’s treating and referral doctors, has “cascaded” into a severe degenerative condition. [Dr. A] and [Dr. L] agree that the appropriate treatment for Claimant’s right knee is a total knee replacement.

A peer review report, signed by two doctors, is of the opinion that the proposed knee replacement surgery is unnecessary to treat the original knee sprain diagnosis, but rather is intended to treat the claimant’s PVS. The hearing officer found that the claimant was first diagnosed with PVS at the time of the January 5, 1998, surgery. By letter dated March 15, 2000, the ombudsman wrote Dr. A asking several questions including what is the cause of the PVS. The record was kept open for Dr. A’s response (Dr. A had himself been unavailable for a period of time). Dr. A responded by letter dated April 26, 2000, confirming that he agreed with Dr. L that the PVS was first diagnosed on January 5, 1998; describing what PVS is; and concluding:

There is no known reason why [PVS] appears. There is no known good treatment for this either. We do not understand why the inner layer of the joint acts in this way. For [the claimant, the PVS] was a coincidence but was not the cause of the problem.

On the waiver issue, the claimant contended that the carrier had received written notice of the PVS condition in early 1998 or before; that the carrier had not disputed that condition until October 1999; and that, under Section 409.021 and Rule 124.6, as interpreted by numerous Appeals Panel decisions (see Texas Workers’ Compensation Commission Appeal No. 000713, decided May 17, 2000, for a listing of some of those decisions), the carrier had failed to timely contest compensability. Rule 124.3(c), effective March 13, 2000, provides that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) “do not apply to disputes of extent of injury.” Rule 124.3(c) further provides that if a carrier receives a medical bill and wishes to dispute liability for the

treatment it shall file a notice of dispute not later than the earlier of the date the medical bill is denied or the due date for paying or denying the medical bill. The preamble to this rule states that failure to timely dispute the extent of injury “is a compliance issue. It does not create liability.”¹ The claimant argues that the benefit review conference (BRC), where the issues were framed, was held prior to March 13, 2000 (it was held on March 9, 2000), and, therefore, the hearing officer should proceed under the law in effect at the BRC. We disagree. We have held that Rule 124.3 is applicable in those cases in which a CCH is convened on or after March 13, 2000, to address a disputed issue of carrier waiver in the context of an extent-of-injury question because it precludes the Texas Workers’ Compensation Commission (Commission) from imposing a waiver after that date. The CCH, in this case, was convened on April 18, 2000. Therefore, the hearing officer properly applied Rule 124.3 and the claimant’s reliance of prior law was misplaced.

It is on the issues of extent of injury and disability that we have some problems. The hearing officer makes clear in her conclusions of law that she does not believe the compensable right knee injury includes or extends to PVS of the right knee. One of the conclusions of law stated:

2. Claimant’s compensable injury does not include or extend to include an injury for [PVS] of the right knee.

However, the hearing officer, in order to support this conclusion, made the following findings of fact:

10. Claimant’s right knee MRI, taken on November 26, 1997, demonstrated osteochondritis dissecans of the lateral femoral condyle and synovial effusion of the knee, but the medial and lateral collateral ligaments, the cruciate ligaments, the medial and lateral menisci, and the quadriceps tendon appeared normal.

* * * *

34. [Dr. L] expressed his expert medical opinion, to a degree of reasonable medical probability, that Claimant’s compensable injury “has continued to cascade into a degenerative process from the traumatic factor that occurred from the osteochondritis dissecans and the chondral cartilaginous incongruities which resulted.”

* * * *

¹We note that Rule 124.6 was also repealed effective March 13, 2000.

40. On December 7, 1999, [Dr. A] noted that the treatment rendered to Claimant to date was necessary for his compensable injury and for arthritis that consequently developed.

* * * *

43. On April 26, 2000, in response to Claimant's request for clarification, [Dr. A] indicated that Claimant's initial diagnosis was internal derangement of the right knee, and that the osteochondritis dissecans at the lateral femoral condyle shown by MRI was directly related to the work-related accident of _____ and was treated surgically.

44. On April 26, 2000, [Dr. A] clearly stated that he agreed with [Dr. L's] assessment of Claimant's right knee deterioration caused by trauma sustained on _____.

* * * *

47. The opinions of [Dr. A] and [Dr. L] established that the total knee replacement surgery is intended as treatment for the primary compensable right knee injury, not as treatment for the villonodular synovitis.

The claimant was diagnosed by Dr. A with internal derangement of the right knee and the claimant underwent surgery for the first time for this condition on January 5, 1998. The postoperative diagnosis was hypertrophic synovitis of the right knee. The operative report indicated that hypertrophic synovium surrounded the patella and the pouch itself was filled with villi from the synovium. The synovium was removed from the medial compartment, lateral compartment, the intracondylar notch, and the suprapatellar pouch.

The claimant underwent a second knee operation on March 23, 1999. The preoperative diagnosis was PVS of the right knee and the same diagnosis was made after the operation. The claimant again underwent a total synovectomy of the knee in order to remove all the synovium possible.

When the synovitis and condromalacia did not resolve through surgery, it was determined by the physicians that a total knee replacement was necessary. In a report dated January 12, 2000, Dr. A wrote:

[t]he [PVS] is a consequence of the fall [the claimant] suffered on _____. Before this injury at work, the patient was perfectly healthy and climbing and walking many hours a day without any problem. Right after the injury, he began having troubles with internal derangement of the knee first, which was followed with synovitis and then arthritis. These three conditions continued to worsen with time. At this time, the patient needs treatment for the primary

injury. Of course, the [PVS] will be treated concurrently because in order to insert the total knee, the synovium has to be completely removed so the prosthesis can be applied. Again, the primary problem this patient has is the injury to the knee he sustained on _____ and this is what he is being treated for. The [PVS] is secondary and an aggravation caused by the primary fall.

Attached to the Initial Medical Report (TWCC-61) from Dr. L dated September 16, 1999, is a narrative in which he writes:

Although osteochondritis dissecans has been suggested with the MRI evaluation it is in fact an invasive phase of the TVNS that is involving this right knee. Although pathological specimens are not supported with this it appears at [sic] this may be a nodular type of involvement.

Dr. L suggested that a total knee replacement would be most effective in treating the claimant's continued problems with his right knee in lieu of additional repetitive arthroscopic procedures to debride and remove the synovium in order to preserve the cartilage surface on a longer basis.

The hearing officer noted that the parties opted to dispute the compensability of this "condition" rather than challenge the question of propriety of medical treatment through the medical review process. However, the carrier has already accepted and paid for two prior surgeries to remove the synovium from the claimant's right knee and to dispute the third surgery for the same "condition" at this late hour appears somewhat disingenuous.

On the issue of disability, the hearing officer failed to direct any of her discussion of the evidence or make findings of fact regarding the issue of disability during the time period in question from August 31, 1999, through November 4, 1999, to support her conclusion that the claimant did not have disability during this period of time. While, in other circumstances, we might be able to infer findings regarding disability from other findings that the claimant was released to return to work at regular duty on June 15, 1998 (Finding of Fact No. 24), and that he continued to work regular duty until August 30, 1999 (Finding of Fact No. 29), in light of the inconsistencies regarding the extent of injury, we also remand on the disability issue.

We hereby reverse the hearing officer's decision on the extent-of-injury and disability issues and remand the case back to the hearing officer to correlate her findings of fact to her conclusion of law regarding the extent of injury and to make specific findings of fact regarding disability.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is

received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge