

APPEAL NO. 020902  
FILED MAY 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 25, 2002, the hearing officer concluded that the respondent's (claimant) compensable injury of \_\_\_\_\_, does not include spinal stenosis at L1-2 and L2-3 and/or spondylolisthesis at L2-3 and L5-S1, and that the claimant had disability resulting from the compensable injury of \_\_\_\_\_, on \_\_\_\_\_, March 5, 2001, and for the period beginning on August 9, 2001, and continuing through the date of the hearing. The appellant (carrier) appeals the disability determination on evidentiary grounds, asserting that the hearing officer's extent of injury determination limits the compensable injury to a lumbar back strain, which does not support the period of disability from August 9, 2001, through the date of the hearing. The file does not contain a response from the claimant. The hearing officer's finding that "[t]he said injury event of \_\_\_\_\_ was not a producing cause of spinal stenosis at L1-2-3 and or of spondylolisthesis at L2-3 or L5-S1" and his conclusion that "[t]he compensable injury of \_\_\_\_\_ does not include spinal stenosis at L1-2-3 and/or spondylolisthesis at L2-3 and L5-S1" have not been appealed and thus have become final. Section 410.169.

DECISION

Reversed and rendered.

The claimant testified that in 1997 he injured his left knee at work, filed a workers' compensation claim for it, underwent knee surgery, and returned to work two weeks after the surgery. He further stated that he also experienced low back pain radiating into his legs after the knee injury and was treated conservatively by Dr. G but did not miss any work because of this back pain. The claimant further testified that on \_\_\_\_\_, he hurt his back lifting a table at work and in \_\_\_\_\_, filed a workers' compensation claim for this back injury. The parties stipulated that the claimant sustained "a compensable injury" on \_\_\_\_\_, and the disputed injury issue was whether this \_\_\_\_\_, injury included spinal stenosis at L1-2 and L2-3 and/or spondylolisthesis at L2-3 and L5-S1. As indicated above, this issue was determined adversely to the claimant and has not been appealed.

Concerning disability, which is appealed, the claimant testified that he missed work on \_\_\_\_\_ and \_\_\_\_\_, because of his back pain following the table lifting incident but thereafter did not miss work until Dr. G took him off work effective August 9, 2001, to undergo spinal surgery two weeks later. However, the surgery was delayed until December 20, 2001, at which time the claimant was 60 years of age. Dr. G's postoperative diagnosis was severe spinal stenosis, L2-3, with degenerative spondylolisthesis with spinal stenosis, L1-2.

The hearing officer's finding and conclusion on the disability issue are as follows:

## FINDING OF FACTS

6. Due to the **claimed** injury Claimant was unable to obtain or [sic] retain employment at wages equivalent to his preinjury wage on \_\_\_\_\_, March \_\_\_\_\_, and for the period beginning on August 9, 2001, and continuing through the date of this hearing. [Emphasis added.]

## CONCLUSIONS OF LAW

3. Claimant had disability resulting from the **compensable** injury of \_\_\_\_\_ on \_\_\_\_\_, March \_\_\_\_\_, and for the period beginning on August 9, 2001 and continuing through the date of this hearing. [Emphasis added.]

The carrier contends that the compensable injury of \_\_\_\_\_, which it accepted was a lumbar sprain/strain injury, not the claimed stenosis and spondylolisthesis for which the claimant underwent surgery, and therefore that the hearing officer erred in finding that the claimant had disability resulting from the compensable injury from August 9, 2001, through the date of the hearing. The hearing officer's statement of the evidence offers the following rationale:

Concerning disability, Claimant worked in pain from March 6, 2001 until his doctor took him off work effective August 9, 2001. There is some evidence in the record that Claimant's pain got worse over that period of time. Claimant was taken off work to have surgery, but he did not actually have the surgery until December 2001, apparently because the surgery was denied by the Carrier. Claimant proved the surgery was occasioned by the compensable injury on \_\_\_\_\_. Although the surgery, decompression at several levels and fusion at L2-3, was to address pre-existing conditions of "severe spinal stenosis, L2-3, with degenerative spondylolisthesis with spinal stenosis, L1-2", Claimant had those same conditions and did not need surgery before the injury of \_\_\_\_\_. Claimant proved disability on \_\_\_\_\_ and \_\_\_\_\_, and from August 9, 2001 through the date of this hearing.

What this explication by the hearing officer appears to say is that the claimant's compensable \_\_\_\_\_, injury, whatever it consisted of, does not include the preexisting lumbar stenosis and spondylolisthesis for purposes of becoming part of the compensable injury; that the \_\_\_\_\_, injury nevertheless aggravated those noncompensable lumbar spine conditions to the extent that the claimant's back pain increased and he had to undergo surgery for them; and that, consequently, he had disability. This analysis is patently erroneous and constitutes legal error. If, as the hearing officer has found, the claimant's compensable \_\_\_\_\_, injury does not include the lumbar spine stenosis and spondylolisthesis, then the claimant is entitled to neither medical or income benefits for those conditions, notwithstanding that those conditions resulted in

increased pain and eventual surgery. In our view, the evidence does not support a determination that the compensable injury was a cause of the disability found by the hearing officer, and his determination that the claimant had disability from August 9, 2001, through the date of the hearing is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We reverse so much of the hearing officer's Decision and Order as determines that the claimant had disability from August 9, 2001, through the date of the hearing and render a new decision that he did not have disability for that period.

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

**DONALD E. PEACE  
320 WESTWAY PLACE, #521  
ARLINGTON, TEXAS 76018.**

Philip F. O'Neill  
Appeals Judge

CONCUR:

Elaine M. Chaney  
Appeals Judge

Michael B. McShane  
Appeals Judge