

APPEAL NO. 021543  
FILED JULY 30, 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 (CCH) was held on June 7, 2002. The appellant (claimant) appeals the hearing officer's decision that he has no disability and requests that we modify the decision so that it conforms to the hearing officer's Finding of Fact No. 4, which finding was in the claimant's favor on the disability issue. The respondent (carrier) agreed that the decision with respect to disability should be reformed and requested that the decision with respect to the extent-of-injury issue be reformed to conform to the hearing officer's Conclusion of Law No. 5.

DECISION

Affirmed as reformed.

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." In the discussion portion of the decision, the hearing officer states, "Regarding disability, the claimant's testimony was credible that he was unable to return to his work as a carpenter after \_\_\_\_\_ due to his compensable injury to his left upper extremity and cervical region on \_\_\_\_\_." Finding of Fact No. 4 states "Claimant was unable to obtain or retain employment at wages equivalent to his preinjury wage level due to the compensable injury of \_\_\_\_\_ from \_\_\_\_\_ to the date of this hearing."

Conclusion of Law No. 4 states "Claimant did not sustain disability as a result of the compensable injury from \_\_\_\_\_ through the date of the hearing." Conclusion of Law No. 4 and the hearing officer's decision on the disability issue are not consistent with the hearing officer's statement in the discussion portion of her decision or with Finding of Fact No. 4.

We modify Conclusion of Law No. 4 and the hearing officer's decision to conform to her finding of fact on the disability issue. Accordingly, with regard to the disability issue, Conclusion of Law No. 4 and the hearing officer's decision are modified to state "**The claimant sustained disability as a result of the compensable injury from \_\_\_\_\_, through the date of the CCH.**"

The carrier notes in its response that the decision on the extent-of-injury issue is inconsistent with the applicable conclusion of law. Conclusion of Law No. 5 states "The compensable injury of \_\_\_\_\_ does include the cervical region, but does not include the left shoulder." In her discussion the hearing officer stated:

As for the shoulder, although there is a note of limitation of range of motion of the left shoulder in a medical record, [Dr. B] noted that the

claimant had normal range of motion in the left shoulder and there were insufficient medical evidence and testimony to establish a separate injury to the left shoulder, especially in light of the fact that the claimant indicated he continued having some problem with his left shoulder as a result of an injury in 1990.

Finding of Fact No. 3 states "Claimant did not sustain harm or damage to the physical structure of his left shoulder in the course and scope of his employment on \_\_\_\_\_." The decision states "The compensable injury of \_\_\_\_\_ does extend to and include the cervical region, but does include and extend to the left shoulder."

We modify the decision to conform to the findings of fact and conclusions of law. Accordingly, with regard to the extent-of-injury issue, the hearing officer's decision is modified to state "**The compensable injury of \_\_\_\_\_, does include the cervical region, but does not include the left shoulder.**"

The claimant noted in his appeal that there was never a contention that he alleged that he injured his knee in the course and scope of his employment and requested that the following language be deleted from the discussion portion of the decision and order: "The preponderance of the evidence established that the claimant injured his left knee at work on \_\_\_\_\_ and that injury resulted in a strain and patellar subluxation/dislocation with an aggravation of the chondromalacia and a possible medial meniscus tear." We agree that this language should be deleted. The claimant additionally notes that the following sentence in the discussion portion of the order contains the wrong date and should be reformed to reflect the proper date. The following sentence shall be reformed to reference March 26, 2002: "Dr. B concluded his treatment of the claimant's upper extremity in March of 2002 and returned the claimant to the care of [Dr. A] who confirmed that the release to return to work on March 26, 2001 was limited to the upper extremity."

We do not modify any other portion of the hearing officer's decision other than the reformations described above.

We affirm the decision and order of the hearing officer as modified.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**C T CORPORATION  
350 NORTH ST. PAUL  
DALLAS, TEXAS 75201.**

---

Michael B. McShane  
Appeals Panel

CONCUR:

---

Gary L. Kilgore  
Appeals Panel

---

Roy L. Warren  
Appeals Panel