

APPEAL NO. 030056
FILED FEBRUARY 12, 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 was held on December 9, 2002. The hearing officer determined that (1) the compensable injury of _____, does not extend to and include severe depression; and (2) the appellant's (claimant) impairment rating (IR) is eight percent as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant appeals the determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Reversed and rendered in part, reversed and remanded in part.

EXTENT OF INJURY

We first address the claimant's assertion that the hearing officer erred in admitting Carrier's Exhibit Nos. 2 and 11. The record reflects that the claimant did not object to Carrier's Exhibit No. 2 at the hearing below. Accordingly, any error in the admission of the record was waived and will not be considered for the first time on appeal. With regard to Carrier's Exhibit No. 11, the claimant objected on the basis that the videotape evidence does not depict the claimant, but shows some unknown person going about daily activities. The claimant's objection goes to the weight and credibility of the evidence and is not, itself, grounds for reversing the hearing officer's decision.

Notwithstanding the above, the hearing officer erred in determining that the compensable injury does not extend to and include severe depression. The medical evidence indicates that the claimant developed major depression as a result of chronic pain from the compensable injury, significant disruption of activities of daily living, inability to work, and financial distress. The claimant testified that his depression resulted from anger toward his treating doctor, financial difficulties following his injury, inability to work due to the compensable injury, and an inability to workout at the gym. Given this evidence, the hearing officer stated, in the "Discussion" portion of the decision, that "[t]he Claimant's depression is a result of the circumstances arising out of his injury, and not the result of the injury itself." From this statement, it is apparent that the hearing officer applied an incorrect legal standard in determining that the claimant's depression is not compensable.

We have said that depression is not compensable if it is traceable to the "circumstances arising out of and immediately following the injury" as opposed to being the "result of the injury." Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996. To be clear, where, as here, the depression naturally flowed from the pain and physical limitations caused by the compensable

injury, the depression is compensable; whereas depression that resulted from the stress of the workers' compensation "system" or financial difficulties is not compensable. See Texas Workers' Compensation Commission Appeal No. 012398, decided November 27, 2001; Texas Workers' Compensation Commission Appeal No. 010321, decided March 28, 2001. The fact that there may be more than one cause of the claimant's depression does not preclude a finding of compensability, provided that there is a causal connection between the compensable injury and the claimant's condition. Appeal No. 961449, *supra*. Based upon our determination that the hearing officer misapplied the law and in view of the evidence presented, we reverse the hearing officer's determination and render a decision that the compensable injury does include severe depression.

IMPAIRMENT RATING

The hearing officer erred in determining that the claimant's IR is eight percent as certified by the Commission-appointed designated doctor. The claimant appeals the hearing officer's determination because it does not include a rating for severe depression. Given our reversal of the extent-of-injury determination, we likewise reverse and remand the hearing officer's IR determination for further consideration. On remand, the hearing officer may seek clarification from the designated doctor with regard to a rating, if any, for the claimant's depression.

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 which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **LUMBERMEN'S UNDERWRITING ALLIANCE** and the name and address of its registered agent for service of process is

**DEBRA S. MATHEWS-BUDET
12200 FORD ROAD, SUITE 344
DALLAS, TEXAS 75234.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge