

APPEAL NO. 031378
FILED July 22, 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 April 25, 2003, in San Antonio, Texas. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained a compensable injury on _____, and that the claimant has had disability from September 2, 2002, through April 25, 2003. The claimant appeals the hearing officer's finding that purports to limit the compensable injury to an acute lumbar strain with radiculopathy, and the Statement of the Evidence portion of the decision that purports to rule out a diagnosis of cauda equina syndrome as part of the compensable injury. The respondent (carrier) responds, requesting affirmance.

DECISION

Affirmed as reformed herein.

The only disputed issues at the CCH were whether the claimant sustained a compensable injury on _____, and whether he has sustained disability. There was no issue with regard to the extent of the compensable injury. The claimant contended that he sustained a back injury when he jumped off a crane. One of the medical reports mentions cauda equina syndrome as a possible diagnosis, but concludes that further diagnostic testing may be needed. We disagree with the carrier's assertion that an issue of extent of injury was tried by consent. We note that the claimant's attorney specifically argued at the CCH that the medical evidence indicated that further diagnostic testing was needed to evaluate the extent of the claimant's injury. The hearing officer notes in the Statement of the Evidence portion of her decision that a referral doctor had not provided a causal relationship between the possible cauda equina syndrome and the incident at work, and in Finding of Fact No. 2 finds that the claimant sustained an injury while in the course and scope of his employment on _____, in the form of an acute lumbar strain with radiculopathy. The claimant requests that we reform the hearing officer's decision to remove the limitation on the extent of the compensable injury because there was no disputed issue on the extent of the compensable injury and no issue on the extent of the compensable injury was actually litigated. The claimant also notes that it was not necessary for the hearing officer to rule out a diagnosis of cauda equina syndrome to reach her determination on the disability issue because she determined that the claimant had disability for the entire period alleged.

In Texas Workers' Compensation Commission Appeal No. 021397, decided July 17, 2002, we noted that "The Appeals Panel has encouraged hearing officers to indicate the nature of the injury when determining whether an injury existed; however, we have also stated that it is inappropriate for a hearing officer to make a final determination on an issue of extent of injury when that issue is not before the hearing officer." Texas

Workers' Compensation Commission Appeal No. 010322, decided March 22, 2001, indicated that there may be instances where it becomes necessary to make findings on the extent of the compensable injury in order to resolve other disputed issues.

In the instant case, the carrier does not appeal the hearing officer's decision, including Finding of Fact No. 2. In other words, the carrier does not disagree that the claimant's compensable injury includes an acute lumbar strain with radiculopathy. Among other things, the claimant has been diagnosed as having a lumbar strain with lumbosacral radiculopathy. The claimant's appeal requests that we reform the hearing officer's decision to remove the limitation on the extent of the claimant's compensable injury, noting that the medical evidence indicates that further diagnostic testing is needed to determine the specific nature of the injury. Under the particular circumstances of this case, we agree with the claimant's request to reform the hearing officer's decision. We reform Finding of Fact No. 2 to state: "The claimant sustained an injury in the course and scope of employment on _____, which includes, but is not necessarily limited to, an acute lumbar strain with radiculopathy." We also reform the hearing officer's decision to reflect that whether the compensable injury includes cuada equina syndrome has not been determined because it was not a disputed issue. If an extent-of-injury dispute arises, the parties can proceed with that issue through the dispute resolution process. See Texas Workers' Compensation Commission Appeal No. 020127, decided March 4, 2002.

As reformed herein, we affirm the hearing officer's decision and order.

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

**DAVE WOODS
14160 DALLAS PARKWAY, SUITE 500
DALLAS, TEXAS 75254.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge