

APPEAL NO. 040078  
FILED FEBRUARY 27, 2004

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 December 2, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) has an impairment rating (IR) of 29% in accordance with the latest report of Dr. J, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, and that the claimant's \_\_\_\_\_, compensable injury does not extend to post-traumatic stress syndrome (PTSD). The appellant (carrier) appealed, arguing that it was error for the hearing officer to determine that a prior determination had been made regarding whether or not the claimant's diagnosis of reflex sympathetic dystrophy is a part of his compensable injury. The carrier additionally argues that because the hearing officer did not rule fully on the extent-of-injury issue that the IR can not yet be determined. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the carrier was found liable for an \_\_\_\_\_, injury to the claimant. The parties agreed that the issues to be resolved at the CCH were: (1) whether the compensable injury includes the claimant's diagnosis of PTSD and reflex sympathetic dystrophy (RSD) of the right lower extremity; and (2) the claimant's IR.

The extent-of-injury determination involved questions of fact for the hearing officer to resolve. The hearing officer concluded that the claimant did not show by a preponderance of the evidence that she suffered PTSD from an incident at work on \_\_\_\_\_, and that diagnosis is not part of the compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination that the claimant's \_\_\_\_\_, compensable injury does not extend to PTSD is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

It was error for the hearing officer to find that a determination was made in a prior proceeding that RSD in the right lower extremity was part of the compensable \_\_\_\_\_, injury. In Texas Workers' Compensation Commission Appeal No. 010564, decided April 19, 2001, the Appeals Panel affirmed the hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_,

and had disability from \_\_\_\_\_, through the date of that CCH. It was noted in Appeal No. 010564, *supra*, that the real issue in the case was whether the claimant was in the course and scope of her employment at the time of her injury. Further, Appeal No. 010564 pointed out that there was conflicting evidence concerning the severity of the claimant's injury and that the hearing officer in that case specifically stated that he found the medical evidence supported the contention that the claimant is suffering from RSD more credible than the evidence that she is not. However, an extent-of-injury issue was not before the hearing officer in that case and a determination was not made that the claimant's compensable injury included RSD. This case is remanded back for the hearing officer to make necessary findings of fact and conclusions of law regarding whether or not the claimant's compensable injury includes RSD.

The IR assessed by Dr. J was comprised of combining the claimant's psychological and physical impairment for a total of 29% using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). In a report dated June 5, 2002, Dr. J stated that "the total impairment for the [RSD] of the right lower extremity is 5% whole person" and that he assessed a 25% whole person impairment for the psychological aspect of the chronic pain syndrome. The determination of whether or not the claimant's compensable injury includes RSD will directly affect the determination of the claimant's IR. The claimant's IR cannot be determined until the extent-of-injury issue is fully resolved.

We affirm the hearing officer's determination that the claimant's compensable injury does not include PTSD. We reverse the hearing officer's finding and conclusion that the determination that RSD is part of the compensable injury has passed beyond the jurisdiction of the Commission and remand the case back for the hearing officer to make a determination about whether the claimant's compensable injury includes RSD. Since the extent-of-injury determination has not been fully resolved, we likewise reverse the determination that the claimant has a 29% IR and remand to the hearing officer for further proceedings consistent with this decision.

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 and 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 **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Edward Vilano  
Appeals Judge