

APPEAL NO. 041368
FILED JULY 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 May 11, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury of _____, does not include or extend to include retrolisthesis at L5-S1, small indentations at L4-5 and L5-S1, lumbar canal stenosis, spondylosis at L5-S1, spondylolisthesis at L5-S1, degenerative disc disease of the lumbar spine, herniated disc at L5-S1, and partial compression of T8-9 and T9-10; that the respondent (self-insured) waived the right to contest compensability of the claimed neck and low back sprain injuries by not timely contesting the injury in accordance with Section 409.021 and Section 409.022; and that the appellant (claimant) had disability resulting from an injury sustained on _____, beginning on _____, and ending March 24, 2003. The claimant appealed, disputing the extent-of-injury and disability determinations. The self-insured responded, urging affirmance. The waiver determination was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that on _____, the claimant sustained compensable injuries that include a lumbar sprain, left shoulder bursitis, right knee sprain/contusion, and left elbow epicondylitis. No testimony was presented at the CCH. The hearing officer found that the carrier took no action with regard to payment or dispute of the initial claimed injury within seven days of first written notice of it and concluded that the self-insured waived the right to contest compensability of the claimed neck and low back sprain injuries by not timely contesting the injury in accordance with Section 409.021 and 409.022. It is clear from the medical evidence in the record, including reports of x-rays taken on the date of the compensable injury, the MRI reports of November 8, 2002, and November 14, 2002, that the self-insured was fully apprised of the conditions which the claimant was asserting as the original compensable injury. As such, the self-insured was obligated to dispute the compensability of the claimed low back injuries in accordance with Section 409.021. The self-insured failed to do this. Since the self-insured waived the right to contest compensability of the injury, the claimant's primary claimed injuries became compensable as a matter of law, and it was error for the hearing officer to limit the self-insured's waiver to compensability of the claimed neck and low back sprain injuries. Texas Workers' Compensation Commission Appeal No. 030831, decided May 22, 2003; Texas Workers' Compensation Commission Appeal No. 023101, decided January 30, 2003; and Texas Workers' Compensation Commission Appeal No. 022183, decided October 9, 2002. The legal consequence of the waiver in this case is that the self-insured may not now prevail on an issue regarding extent of injury that concerns the claimed injury itself. We reverse the hearing officer's determination that the injury does not include or extend to include retrolisthesis at L5-

S1, small indentations at L4-5 and L5-S1, lumbar canal stenosis, spondylosis at L5-S1, spondylolisthesis at L5-S1, degenerative disc disease of the lumbar spine, herniated disc at L5-S1, and partial compression of T8-9 and T9-10, and render a decision that the compensable injury of _____, does include include retrolisthesis at L5-S1, small indentations at L4-5 and L5-S1, lumbar canal stenosis, spondylosis at L5-S1, spondylolisthesis at L5-S1, degenerative disc disease of the lumbar spine, herniated disc at L5-S1, and partial compression of T8-9 and T9-10.

The claimant had the burden to prove that he had disability. A finding of disability is based on the determination that the inability to earn the preinjury wage was a result of the compensable injury. Section 401.011(16). The hearing officer found that the evidence in support of a continuation of disability beyond March 24, 2003, is based predominantly upon the degenerative conditions identified in the MRI report which formed the basis of the disputed issue, and which are not causally related to the bus accident that occurred on _____. Given that we have reversed the extent-of-injury determination, we therefore reverse the hearing officer's determination that the claimant had disability resulting from an injury sustained on _____, beginning on _____, and ending March 24, 2003, and render a determination that the claimant had disability resulting from an injury sustained on _____, beginning on _____, and continuing through the date of the CCH.

We reverse the hearing officer's determination that the injury does not include or extend to include retrolisthesis at L5-S1, small indentations at L4-5 and L5-S1, lumbar canal stenosis, spondylosis at L5-S1, spondylolisthesis at L5-S1, degenerative disc disease of the lumbar spine, herniated disc at L5-S1, and partial compression of T8-9 and T9-10, and render a decision that the compensable injury of _____, does include retrolisthesis at L5-S1, small indentations at L4-5 and L5-S1, lumbar canal stenosis, spondylosis at L5-S1, spondylolisthesis at L5-S1, degenerative disc disease of the lumbar spine, herniated disc at L5-S1, and partial compression of T8-T9 and T9-T10. We reverse the hearing officer's determination that the claimant had disability resulting from an injury sustained on _____, beginning on _____, and ending March 24, 2003, and render a determination that the claimant had disability resulting from an injury sustained on _____, beginning on _____, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge