

APPEAL NO. 042579
FILED DECEMBER 6, 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 September 8, 2004. The hearing officer determined that the appellant's (claimant) compensable injury of _____, extends to and includes major depression and post-traumatic stress disorder (PTSD), that the claimant reached maximum medical improvement (MMI) on October 2, 2003, and that the claimant's impairment rating (IR) is 10% as assessed by the designated doctor whose opinion was given presumptive weight. The extent-of-injury and MMI issues were not appealed and have become final pursuant to Section 410.169.

The claimant appeals the 10% IR rating, contending that the designated doctor had failed to rate the depression and PTSD components of the compensable injury and that the 10% IR was against the great weight of the other medical evidence. The respondent (carrier) responded, contending that the depression and PTSD were not permanent and appropriately did not warrant a permanent IR, that the designated doctor had in fact considered the depression and PTSD and that the designated doctors report was entitled to presumptive weight.

DECISION

Reversed and remanded.

On _____, the claimant, an assistant manager in a retail store, sustained a compensable injury to her low back and shoulder in a robbery where the robber had grabbed her by the hair, held a knife to her throat and threatened to kill her. The parties stipulated that the claimant reached statutory MMI (see Section 401.011(30)(B)) on October 2, 2003.

The claimant was seen by the designated doctor, Dr. A on December 12, 2003, and in a report of that date assessed a 10% IR based on Diagnosis-Related Estimate Lumbosacral Category III; Radiculopathy, 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). Dr. A did note symptom magnification and in regard to the PTSD commented:

As far as her post-traumatic stress disorder, I do not feel that I can give the patient an impairment regarding this condition and/or depression at this time. I do feel that if this had been determined by the Texas Workers' Compensation Commission [Commission] that this is compensatory to her trauma at work then she is going to require further psychiatric care

regarding this. However, this should not physically keep her from performing her duties based upon her back.

Both parties cite this paragraph as evidence that the designated doctor did or did not consider and/or rate the now compensable major depression and PTSD. Apparently clarification was sought from the designated doctor (that letter is not in evidence) and Dr. A replied by letter dated April 15, 2004, that he stands by his 10% IR.

The hearing officer in his Background Information section commented that the designated doctor “would not ‘give her an impairment’ for it” (the depression and PTSD) and found (Finding of Fact No. 6) that the “designated doctor considered the [PTSD] and depression, but would not rate them as impairments.”

Prior to the CCH, and apparently at a prehearing conference, the claimant had requested a continuance in order that the designated doctor be given an opportunity to specifically rate the depression and PTSD. The hearing officer denied the request for a continuance and ruled that the request to have the designated doctor rate the depression and PTSD puts “the cart before the horse” and “if [the hearing officer] decides extent is there [in the claimant’s favor] then [the hearing officer] will go to the designated doctor.” Having decided that the major depression and PTSD was included in the compensable injury the hearing officer had an obligation to request further clarification from the designated doctor, as he said he would do in denying the claimant’s request for a continuance.

The hearing officer’s decision on the IR is reversed and we remand the case for the designated doctor to be specifically informed that the compensable injury includes major depression and PTSD and to seek clarification if that determination would change the designated doctor’s IR.

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 **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge