

APPEAL NO. 051641
FILED AUGUST 22, 2005

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 June 9, 2005. The hearing officer resolved the disputed issues by deciding that the Texas Workers' Compensation Commission (Commission) has jurisdiction to determine compensability of the cervical degenerative disc disease at C3-4 and C5-6, diffuse disc bulges at C3-4, C4-5, and C5-6, and multilevel cervical spondylosis and that the compensable injury of _____, does not extend to and include cervical degenerative disc disease at C3-4 and C5-6, diffuse disc bulges at C3-4, C4-5, and C5-6, and multilevel cervical spondylosis. We note that a clerical correction was made pursuant to Section 410.206 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 140.5(a) (Rule 140.5(a)). The appellant (claimant) appealed, disputing both the determination that the Commission had jurisdiction to decide the issue as well as the determination that the compensable injury did not extend to the conditions alleged. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. In Texas Workers' Compensation Commission Appeal No. 040918, decided June 10, 2004, the Appeals Panel reversed the hearing officer's decision at a prior CCH that the _____, compensable injury does not extend to include an injury to the neck and that the carrier did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022 and rendering a decision that the claimant's _____, compensable injury includes an injury to the neck as a matter of law because the carrier waived the right to contest compensability of the claimed neck injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022. The claimant contends that the determinations made in Appeal No. 040918 are determinative of the issues being disputed in the present CCH and deprive the Commission of jurisdiction to decide the issues specified in the present case. The carrier contends that although a determination was made that the carrier waived the right to dispute a neck injury, the nature of the injury was not specified and that the hearing officer correctly determined that he had jurisdiction to determine whether the compensable injury extends to and includes the specific cervical conditions alleged. The hearing officer did not err in determining that the Commission has jurisdiction to determine whether the _____, compensable injury extends to the various cervical conditions alleged. Whether the compensable injury extends to cervical degenerative disc disease at C3-4 and C5-6, diffuse disc bulges at C3-5, C4-5, and C5-6, and multilevel cervical spondylosis has not been previously litigated. The hearing officer considered an issue of extent of injury at a prior hearing on March 22, 2004. However, this did not preclude the hearing officer in

this case from considering whether the injury extends to the specific conditions of the neck alleged.

In Appeal No. 040918, it was determined that the compensable injury of _____, includes an injury to the neck as a matter of law. In Texas Workers' Compensation Commission Appeal No. 041738-s, decided September 8, 2004, the Appeals Panel established that when a carrier does not timely dispute the compensability of a claim, the compensable injury is defined by the information that could have been reasonably discovered by the carrier's investigation prior to the expiration of the waiver period. Section 409.021, effective for a claim for Workers' Compensation benefits based on a compensable injury that occurred before September 1, 2003, provides that no later than the seventh day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall begin the payment of benefits as required or notify the Commission and the employee in writing of its refusal to pay. It was undisputed that the carrier received first written notice of the injury on June 27, 2003. Therefore, in order to determine the nature of the neck injury that the carrier waived by not initiating payment or timely disputing, the information that could have been reasonably discovered by the carrier's investigation must be examined. In evidence was a Radiology Consultation Report dated _____, that noted the claimant had cervical degenerative disc disease at C3-4 and C5-6. The initial medical report from the emergency room dated _____, reflected that the claimant was complaining of neck tenderness and that the claimant had a history of a herniated cervical disc. A medical record with an invoice date of July 2, 2003, notes that the claimant had a history of significant neck pain with radiculopathy, with magnetic resonance imaging documented right lateral "HNP" at C3-4 that appears to significantly improve clinically until the reported on the job injury that produced severe pain, muscle spasms, and reduced range of motion. Based upon the record before us, that the carrier's investigation could have reasonably discovered that the claimant had cervical degenerative disc disease at C3-4 and C5-6, and that the claimant had a diffuse disc bulge at C3-4 that was being claimed as part of the compensable injury. We reverse the determination that the compensable injury of _____, does not extend to and include cervical degenerative disc disease at C3-4 and C5-6 and diffuse disc bulge at C3-4 and render a new decision that the compensable injury of _____, does extend to and include cervical degenerative disc disease at C3-4 and C5-6 and diffuse disc bulge at C3-4.

We affirm the determination that the Commission has jurisdiction to determine compensability of the alleged cervical conditions. We affirm the determination that the compensable injury of _____, does not extend to include diffuse disc bulges at C4-5 and C5-6, and multilevel cervical spondylosis. We reverse the determination that the compensable injury does not extend to include cervical degenerative disc disease at C3-4 and C5-6 and diffuse disc bulge at C3-4 and render a new determination that the compensable injury of _____, extends to include cervical degenerative disc disease at C3-4 and C5-6 and diffuse disc bulge at C3-4.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge