

APPEAL NO. 060478  
FILED MAY 15, 2006

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 February 6, 2006. The disputed issues were:

1. Does the compensable injury of \_\_\_\_, extend to and include the anterior cruciate ligament partial tear of the right knee?
2. Does the [Texas Department of Insurance, Division of Workers' Compensation (Division)] have jurisdiction to determine whether the compensable injury of \_\_\_\_, extends to and includes the anterior cruciate ligament partial tear of the right knee?

The hearing officer determined:

1. The compensable injury of \_\_\_\_, extends to and includes the anterior cruciate ligament partial tear of the right knee as decided at the [CCH] of September 09, 2004.
2. The Division does not have jurisdiction to rehear whether the compensable injury of \_\_\_\_, extends to and includes the anterior cruciate ligament partial tear of the right knee.

The appellant (carrier) appeals, contending that a determination by the hearing officer at a prior CCH of September 9, 2004, that the "compensable injury of \_\_\_\_, extends to and includes . . . right knee sprain/strain, . . ." was final and binding on the basis of *res judicata* and that decision precluded a finding of an anterior cruciate ligament (ACL) partial tear of the right knee in this case. The file does not have a response from the respondent (claimant).

DECISION

Affirmed as reformed in part and reversed and rendered in part.

It is undisputed that the claimant, a housekeeper, sustained a compensable injury on \_\_\_\_, throwing trash in a dumpster. The claimant underwent a left knee arthroscopic medial meniscectomy on September 13, 2003. An MRI of the right knee was performed on April 15, 2004. The doctor that performed the MRI had an impression of "[m]ildly abnormal ACL with obscured superior individual fibrils suggesting partial tearing or tendinosis." A carrier second opinion doctor reread the right knee MRI and in a report dated May 29, 2004, had an impression of "[n]o definite meniscal tear or cruciate ligament disruption." At a prior CCH on September 9, 2004, the same hearing

officer, in addressing an issue of whether the compensable injury extended to and include the right knee, left knee and low back, determined:

The compensable injury of \_\_\_\_, extends to and includes left knee sprain/strain with contusion, right knee sprain/strain, bilateral inguinal [groin] ligament strain, and lumbar strain.

That determination was not appealed and has become final. Section 410.169.

The present controversy pertains only to the right knee. In reports of examinations performed on November 9 and November 12, 2004, (Dr. C), apparently the present treating doctor, had an impression of "ACL partial tear of the right knee per MRI." Treatment and/or surgery for the right knee was apparently denied by the carrier. The designated doctor in a report dated May 5, 2005, found the claimant not at maximum medical improvement with a diagnosis of right knee sprain (among other things). In another report dated August 25, 2005, the designated doctor commented, regarding the right knee, that the claimant "had evidence of right knee sprain," that she "had not undergone any evaluation and treatment of her right knee" and that the claimant would require treatment for the right knee.

The hearing officer, in the Background Information portion of his decision, attempts to correlate his September 2004 CCH determinations of a right knee strain/sprain as being the same as the April 15, 2004, MRI impression of a "mildly abnormal ACL with obscured superior individual fibrils suggesting a partial tearing or tendinosis." The carrier, on appeal, asserts that the hearing officer is attempting "to recharacterize the prior [September 2004 CCH] decision by changing the findings" (emphasis in the original). The carrier contends that "res judicata prevents the relitigation of a claim or cause of action that was adjudicated and resolved by a final judgment."

Addressing the hearing officer's determination that the compensable injury of \_\_\_\_, extends to and includes the ACL partial tear of the right knee we hold there was conflicting evidence on this point independent of what was decided at the September 2004 CCH. The issue in the present proceeding was does the compensable injury extend to and include the ACL partial tear of the right knee. There was sufficient evidence to establish that fact. We affirm the hearing officer's determination that the compensable injury of \_\_\_\_, extends to and includes the ACL partial tear of the right knee, however we reform that portion of the determination that recites "as decided at the [CCH] of September 09, 2004" by the exclusion of that phrase.

The issue at the September 2004 CCH was whether the compensable injury extended to include the right knee (among other body parts not at issue here). The hearing officer found that the compensable injury extends to and includes a "right knee sprain/strain." The hearing officer answered the issue that the compensable injury did include the right knee (which was what the issue asked) and then attempted to identify the extent of the injury as a right knee sprain/strain. In the Background Information

portion of his September 2004 decision the hearing officer wrote that the claimant's "injuries are limited to . . . right knee sprain/strain . . ." We note that the carrier's position at the September 2004 CCH was that the claimant did not have a right knee injury at all. The hearing officer's determination, which became final, included a determination that the claimant's compensable injury extends to and includes a right knee sprain/strain. A review of the September CCH transcript (included in Carrier's Exhibit I) indicates that an ACL condition of the right knee was not litigated. The fact that the hearing officer found that the compensable injury extends to and includes a right knee strain/sprain does not preclude a subsequent finding that the compensable injury of \_\_\_\_, also extends to and includes an ACL partial tear of the right knee.

Section 408.021(a) provides that, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed, and that the employee is specifically entitled to health care that: (1) cure or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment. The hearing officer, in the 2004 CCH determined the compensable injury extends to and includes a right knee sprain/strain. A determination that the right knee injury is limited to a sprain/strain may have exceeded the scope of the issue before him. However the determination made in the Findings of Fact, Conclusion of Law and Decision only holds that the compensable injury of \_\_\_\_, extends to and includes (among other things) a right knee sprain/strain and therefore the claimant's right knee injury is not necessarily limited to a right knee sprain/strain and also includes an ACL partial tear of the right knee as found in the February 6, 2006, CCH.

The carrier is apparently denying further treatment of the right knee on the basis that the Division does not have jurisdiction to "rehear" the issue of the right knee sprain/strain. As we have explained a final determination that the compensable injury extends to and includes a sprain/strain does not preclude a subsequent finding that the compensable injury also includes an ACL partial tear of the right knee.

The carrier, in its appeal, also objects to the hearing officer's use of a medical dictionary because neither party requested the hearing officer take official notice of the dictionary. We hold that the hearing officer did not err in referring to a widely recognized dictionary as a reference.

We affirm, as reformed, the hearing officer's determination that the compensable injury of \_\_\_\_, extends to and includes an ACL partial tear of the right knee as being supported by the evidence. We reverse the hearing officer's determination that the Division does not have jurisdiction to rehear whether the compensable injury of \_\_\_\_ extends to and includes the ACL partial tear of the right knee and render a new decision that the Division has jurisdiction to determine whether the compensable injury of \_\_\_\_, extends to and includes the ACL partial tear of the right knee.

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

**JAMES H. MOODY, II**  
**2001 BRYAN STREET, SUITE 1800**  
**DALLAS, TEXAS 75201-3070.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge