

APPEAL NO. 061560
FILED SEPTEMBER 26, 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 June 21, 2006. The issue reported out of the benefit review conference (BRC) and agreed upon by the parties was:

Does the compensable injury of _____, include or extend to include tendinosis of the right ankle, partial tear of the Achilles tendon of the right ankle, L4-L5 bulge, anterior cruciate ligament sprain of the right knee, depression, and anxiety?

The hearing officer determined that the compensable injury of _____, includes or extends to include disc bulges at L4-5 and L5-S1 but does not include tendinosis of the right ankle, partial tear of the Achilles tendon of the right ankle, anterior cruciate ligament sprain of the right knee, depression and anxiety.

The appellant (carrier) appealed, contending that the L5-S1 level of the lumbar spine was not included in the disputed issue and contrary to the hearing officer's comment it was not actually litigated. The carrier also appealed the hearing officer's determination that the compensable injury includes a disc bulge at L4-5 as being unsupported by the evidence. The file does not contain a response from the respondent (claimant). The determination that the compensable injury does not include tendinosis of the right ankle, partial tear of the Achilles tendon of the right ankle, anterior cruciate ligament sprain of the right knee, depression and anxiety has not been appealed and has become final. Section 410.169.

DECISION

Reversed and rendered in part and affirmed in part.

The claimant was employed as a cashier for a health care provider. The claimant testified she slipped and fell on a wet floor on _____. The parties stipulated that on _____, the claimant sustained compensable injuries that included a head contusion, a lumbar strain and a thoracic strain. The claimant began treating with Dr. G on _____. A lumbar MRI was performed on September 1, 2005, and had an impression of: "broad based disc bulging at L4-L5 and focal paracentral disc bulging at the L4-L5 disc level to a mild degree. No evidence of narrowing of the neural foramina lateral recess is evident." The findings did have an entry of "At the L5-S1 disc level there is a broad base disc bulging with no evidence of narrowing of the neural foramina lateral recess." The hearing officer references a September 6, 2005, progress note from Dr. G which adds "L-5 disc-lumbalgia to the assessment." A report dated September 29, 2005, from a referral doctor references the MRI as "positive for broad-based disc bulging at the L5-S1 level and focal paracentral disc bulging at the L4 L5 level with no evidence of narrowing of the neural foraminal

lateral recesses.” Subsequent reports dealing with disc bulges only reference the L4-5 bulges.

The carrier’s appeal contends that the L5-S1 level of the lumbar spine was not included in the disputed issue. The hearing officer in the Background Information portion of her decision states: “Although the disputed issue omitted identification of the disc bulge at L5-S1, the parties actually litigated this injury and the evidence supported its inclusion in the compensable injury.” We disagree.

The issue at the BRC, the claimant’s position statement and the carrier’s position statement only reference the “L4-L5 bulge.” The carrier filed a response to the BRC report stating “the issues stated in the benefit review officer’s report are correct” and that the carrier’s position was correctly stated. There was no effort by either party to add L5-S1 bulging to the issue at the CCH and in fact the parties stated they understood the issue as recited. The claimant’s position at the CCH was that “there might have been overlapping of symptoms between the low back strain/sprain and bulging disc” The claimant only refers to low back pain and “the broad-based disc bulge and protrusion” without reference to the level. The carrier argues, “She’s got an L4-5 bulge. Big deal” noting the EMG studies were normal. (Page 62 transcript). The L5-S1 disc level was not litigated and was not even mentioned at the CCH, other than the two reports mentioned. We hold that the hearing officer in making determinations regarding the L5-S1 disc level exceeded the scope of the issue before her. We reverse the hearing officer’s determination that the compensable injury includes or extends to include a disc bulge at L5-S1 and render a new decision that the L5-S1 disc bulge was not a disputed issue before the hearing officer and therefore we strike that portion of Finding of Fact No. 3, Conclusion of Law No. 3 and the decision portion of the hearing officer’s decision and order that refers to the L5-S1 disc bulge.

There is sufficient evidence to support the hearing officer’s determination that the compensable injury includes or extends to include the disc bulge at L4-5 and that determination is affirmed.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge