

APPEAL NO. 062008
FILED DECEMBER 4, 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 August 23, 2006. The issues reported from the benefit review conference (BRC) were:

Does the compensable injury of _____ extend to include aggravation of degenerative disc disease at L2-L3, L3-L4, L4-L5, annular bulge at L2-L3, disc bulges at L2-L3, L4-L5 and spinal stenosis at L2-L3 and L4-L5?

Has the [appellant] Self-Insured waived the right to contest the compensability of aggravation of degenerative disc disease at L2-L3, L3-L4, L4-L5 annular bulge L2-L3, disc bulges at L2-L3, L4-L5 and spinal stenosis at L2-L3 and L4-L5 by not timely contesting the injuries in accordance with Texas Labor Code, Section 409.021 and Section 409.022?

At the CCH the parties agreed to withdraw the carrier waiver issue and "agreed to amend the issues to exclude the disc bulge at L2-3" (counter 2:32). The hearing officer also recites that "the following issue was added upon the parties joint request and the hearing officer's finding of good cause:"

Does the compensable injury of _____, extend to include peridiscal sclerosis?

The hearing officer determined that:

The compensable injury of _____, does extend to and include aggravation of degenerative disc disease at L2-L3, L3-L4, L4-L5, annular bulge at L2-L3, disc bulges at L2-L3 and L4-L5, and spinal stenosis at L2-L3 and L4-L5; however, the compensable injury of _____ does not extend to or include peridiscal sclerosis.

The hearing officer's determination that the compensable injury of _____, does not extend to or include peridiscal sclerosis is not appealed and became final.

The self-insured appeals, contending that the Benefit Dispute Agreement (DWC-24) entered on the record at the CCH did not include "disc bulges at L2-L3." The file does not contain a response from the respondent (claimant).

DECISION

Affirmed in part and reversed and rendered in part.

At the CCH no testimony was taken, only the claimant's attorney was present and the self-insured appeared by telephone. The hearing officer read into the record a DWC-24 agreement, signed by the parties and the claimant's attorney (but not signed by a Texas Department of Insurance, Division of Workers' Compensation (Division) employee) which recites that the compensable injury does not extend to include peridiscal sclerosis but does include "degenerative disc disease at L2-L3, L3-L4, and L4-L5, annular bulge at L2-L3, disc bulge at L4-L5 and spinal stenosis at L2-L3 and L4-L5." The claimant's attorney and the carrier's attorney informed the hearing officer, on the record, that the agreement read into the record was the parties' agreement. 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provides that an oral agreement reached during a CCH and preserved in the record is effective and binding on the date made. The hearing officer found that the compensable injury includes, among other conditions, "disc bulges L2-L3." A review of the audio disc, at counter 3:35, indicates that the agreement read into the record, does not include the disc bulges at L2-L3. Although a disc bulge at L2-L3 had originally been included in the issue reported out of the BRC, by agreement the L2-L3 disc bulge had been excluded at the CCH. No disc bulge at L2-L3 was actually litigated.

We affirm the hearing officer's decision that the compensable injury of _____, does extend to and include aggravation of degenerative disc disease at L2-L3, L3-L4, L4-L5, annular bulge at L2-L3, disc bulge at L4-L5 and spinal stenosis at L2-L3 and L4-L5 as being in conformance with the agreement entered into the record. We reverse the hearing officer's determination that the compensable injury of _____, extends to include an aggravation of a disc bulge at L2-L3 because it was not part of the amended disputed issue, was not litigated and was not part of the DWC-24 agreement. We render a new decision that a disc bulge at L2-L3 had been excluded in the amended extent-of-injury issue and that the DWC-24 agreement read into the record did not include a disc bulge at L2-L3.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge