

APPEAL NO. 062249
FILED JANUARY 2, 2007

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 July 26, 2006, with the record closing on September 28, 2006. The hearing officer determined that the compensable injury of _____, includes or extends to include a posterior disc protrusion at C3-C4, facet arthropathy at C3-C4, lateral spinal stenosis at C3-C4, posterior disc herniations at C4-C5 and C6-C7, a posterior disc protrusion at C5-C6, facet arthropathy at C5-C6, foraminal stenosis bilaterally and central spinal stenosis at C5-C6, bilateral hearing loss, and post-traumatic head injury syndrome with tinnitus of the left ear, vertigo, and headaches, and that the respondent (claimant) had disability from January 23, 2006, through the date of the CCH.

The appellant (carrier) appeals both issues specifically contending that the hearing officer's decision on the disputed issues is not supported by the evidence, based on the reports of its Required Medical Examination (RME) doctor. The claimant responds, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained compensable cervical sprain/strain and head contusion injuries on _____. The claimant testified in some detail how he had stood up and struck his head on a steel box or bin, how he was briefly stunned and how he felt pain in his head and neck. The claimant was seen by Dr. L on the date of injury and on January 11, 2006. Dr. L took x-rays, scheduled the claimant for a neurological consult and released the claimant to return to work at regular duty provided that the claimant not work at elevated heights.

The hearing officer noted that the claimant experienced persistent symptoms and changed treating doctors to Dr. S. The claimant was initially seen by Dr. S on January 23, 2006 (not January 13, 2006, as noted by the hearing officer). In evidence are narrative reports dated January 23, 2006, February 28, 2006, March 8, 2006, as well as various medical notes and Work Status Reports (DWC-73) from Dr. S. Also in evidence is a report dated July 13, 2006, from Dr. S where he was specifically asked, and answered, questions regarding the disputed extent of injury conditions (Claimant's Exhibit No. 14). Dr. S also testified at the CCH further explaining some of his answers contained in the July 13, 2006, report. The hearing officer commented in the Background Information portion of her decision that she found Dr. S's testimony regarding the claimant's condition "credible" and "persuasive."

The claimant was also examined by Dr. O, the carrier's RME doctor. In a report dated March 23, 2006, Dr. O stated that he believed that the claimant's injury was

limited to a resolved cerebral contusion and that the claimant could return to work at full duty without restrictions. Dr. O also submitted a rebuttal report dated August 8, 2006, countering Dr. S's July 13, 2006, report. In this report Dr. O commented that "the cervical findings are all degenerative in nature unrelated to an acute event."

In its appeal the carrier contends:

[Dr. S] specifically testified that Claimant's spondylosis and facet arthropathy were not related to or a part of his work injury. However, the Hearing Officer found that the compensable injury included these degenerative conditions. That the Hearing Officer failed to listen to or accurately record [Dr. S]'s testimony is further highlighted by the fact that she believed he testified he treated Claimant for over twenty years and he exhibited no prior symptoms of the disputed conditions.

We note that neither the issue reported out of the benefit review conference, nor the issue agreed upon by the parties, nor the hearing officer's decision includes "spondylosis." It is true that question 5 in Claimant's Exhibit No. 14 dealt with "spondylosis at C3-4, C4-5, C5-6 and C6-7." A similar question was posed to Dr. S at the CCH and in both the questionnaire and at the CCH, Dr. S was of the opinion that he did not believe the compensable injury caused spondylosis which Dr. S explained was "another term for a certain type of arthritis" which has nothing to do with the injury. Neither the claimant nor the carrier contend that spondylosis is part of the compensable injury and we do not consider the fact that Dr. S was asked about spondylosis litigated the matter. The hearing officer did not err by omitting a reference to spondylosis.

The carrier also alleges error that the hearing officer found facet arthropathy part of the work injury. The hearing officer did find that the compensable injury includes or extends to include "facet arthropathy at C3-C4" and "facet arthropathy at C5-C6." At the CCH, Dr. S explained that the claimant has an underlying degenerative disc disease which had been asymptomatic and that the trauma of the compensable injury had triggered some, but not all, of those conditions to become symptomatic. Specifically in question 7 of Claimant's Exhibit No. 14, Dr. S is asked, referring to the work injury, whether the claimant "sustained an injury to his cervical area in the form of facet arthropathy at C3-4 and C5-6?" (emphasis in the original). Dr. S replied "No, I believe the arthropathy itself is a part of the underlying disease, unrelated to recent trauma." At the CCH, claimant's attorney asked Dr. S whether the facet arthropathy "would be considered part of the underlying degenerative condition?" Dr. S replied "Yes" and no further effort was made to clarify the answer. (Tape 2, side 1 counter 417). Consequently, there is no evidence that the compensable injury includes facet arthropathy at any level or specifically at C3-C4 and C5-C6. We reverse that portion of Finding of Fact No. 4, Conclusion of Law No. 3 and the Decision portion of the decision and order which holds that the compensable injury includes or extends to facet arthropathy at C3-C4 and C5-C6 as not being supported by the evidence. We render a new decision by striking "facet arthropathy at C3-C4 and C5-C6" from those determinations.

We affirm the hearing officer's determinations on the extent-of-injury issue, except for the facet arthropathy, and the disability issue as being supported by the evidence. We reverse that portion of Finding of Fact No. 4, Conclusion of Law No. 3 and the Decision portion of the decision and order that refers to facet arthropathy by striking "facet arthropathy at C3-C4" and "facet arthropathy at C5-C6," from those determinations.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge