

APPEAL NO. 062275
FILED DECEMBER 27, 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 October 4, 2006. The issues announced from the Benefit Review Conference (BRC) and agreed upon by the parties were: (1) Does the compensable injury of _____, include compression fracture(s) at T5 and/or T7; and (2) Did the respondent (claimant) have disability resulting from an injury sustained on _____, from _____, and continuing through the present?

The hearing officer decided that the compensable injury of _____, includes the compression fracture at T7 and that the claimant had disability as a result of the compensable injury from April 4, 2006, through the present and at no other times.

The appellant (carrier) appealed, contending that the hearing officer's decision failed to address the issue of whether the compensable injury extends to include a compression fracture at T5. Additionally, the carrier asserted that the hearing officer erred in determining that the compensable injury extends to include a compression fracture at T7 and in determining a period of disability if the extent-of-injury issue is reversed. The appeal file does not contain either an appeal or a response from the claimant.

DECISION

Affirmed in part, reversed and remanded in part.

It was undisputed that on _____, the claimant sustained a compensable injury while working on temporary assignment at a pipe manufacturing company as an extractor. It was undisputed that the claimant was diagnosed with a thoracic compression fracture. There was conflicting evidence regarding the mechanism of injury. The claimant testified that he was reaching over and putting pressure on a rotating ceramic pipe when his gloves got caught and he was jerked downward.

The evidence supports the hearing officer's decision that the compensable injury extends to include a compression fracture at T7 and that the claimant had disability as a result of the _____, compensable injury from April 4, 2006, and continuing through the present and at no other times.

We affirm the hearing officer's determinations on the extent of injury including a compression fracture at T7 and on disability.

The hearing officer, in her background discussion, findings of fact, and conclusions of law, only addressed a compression fracture at T7. A review of the

record indicates that the claimant's position at the BRC, presentation of evidence at the CCH, and argument asserted that the compensable injury extended to include compression fracture(s) at T5 and/or T7. The carrier asserts that the hearing officer failed to determine whether the compensable injury extends to include a compression fracture at T5, even though it was a certified issue and requires a ruling.

The hearing officer erred in failing to address whether the compensable injury extends to include the claimed compression fracture at T5. Accordingly, we reverse the hearing officer's decision as being incomplete and remand the case for the hearing officer to consider and make findings on the claimed compression fracture at T5. No additional evidence is required. The hearing officer at her discretion may allow additional oral or written comment on the remanded issue regarding the alleged compression fracture at T5.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 92642, decided January 20, 1993.

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

**RUSSELL OLIVER, PRESIDENT
6210 EAST HWY 290
AUSTIN, TEXAS, 78723.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge