

APPEAL NO. 070595  
FILED JUNE 20, 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 January 23, 2007. The hearing officer resolved the disputed issues by deciding that: (1) the appellant/cross-respondent's (claimant) compensable injury of \_\_\_\_\_, extends to include a cervical sprain/strain; (2) the compensable injury of \_\_\_\_\_, extends to include acute closed head injury with concussion, post-concussion syndrome, mood instability, and depression solely by virtue of carrier waiver; (3) the respondent/cross-appellant (carrier) waived the right to dispute compensability of a cervical sprain/strain; and (4) the claimant did not have disability beginning August 9, 2006, through the date of the CCH.

The claimant appealed the hearing officer's disability determination. The carrier appealed the hearing officer's extent of injury and carrier waiver determinations.

**DECISION**

Reversed and rendered in part, affirmed in part.

**FACTUAL SUMMARY**

The claimant testified that on \_\_\_\_\_, he was struck in the back of his head by a rock as he was surveying land in a wooded area. It is undisputed that the carrier has accepted a contusion to the head and a cervical sprain/strain. The claimant contends that the carrier waived the right to dispute the other conditions at issue. The hearing officer concluded that the carrier first received written notice of the claimed injury on February 16, 2006, and that the carrier could have reasonably discovered the claimed conditions prior to the expiration of the waiver period. The claimant testified that he had disability from August 9, 2006, through the date of the CCH due to his compensable injury of \_\_\_\_\_.

**EXTENT OF INJURY AND CARRIER WAIVER**

The claimant's injuries in dispute were diagnosed during the carrier waiver period and confirmed thereafter. The hearing officer's decision regarding extent of injury and carrier waiver is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

**DISABILITY**

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer determined that the claimant did not have disability

beginning August 9, 2006, through the date of the CCH. In his discussion, the hearing officer states that:

The Claimant presented to an emergency room on August 16, 2006, with suicidal ideations. The physiological and neurological examination there by [Dr. P] was essentially normal. The diagnoses were a major depressive disorder, post-traumatic stress disorder, and post-closed head injury "with sequelae of impaired dexterity."

In evidence is a medical report from Dr. W that shows that the claimant was referred by his family physician to the emergency room because of suicidal ideation. (Claimant's Exhibit No. 8). The report indicates that the claimant was admitted to the hospital on August 16, 2006, and diagnosed with "Major depressive disorder, suicidal," "Posttraumatic stress disorder" and "Status post closed head injury with sequelae of impaired dexterity." A medical report from Dr. P shows that the claimant was admitted to the hospital on August 16, 2006, and discharged from the hospital on August 26, 2006, for one or more of the compensable conditions. (Claimant's Exhibit No. 9). The report lists the discharge diagnoses of: "Major affective disorder, depressed secondary to cranial closed head injury;" "Status post closed head injury;" "Abnormal CT scan of cervical vertebrae;" and, "Catastrophic stressors due to cranial injury and emotional repercussions of closed head injury."

A medical report from Dr. DV dated September 12, 2006, states that the claimant:

From the neurologic standpoint and only on the neurologic standpoint, I do not see any reason why he could not return to work to his previous job. His problem; however, now is that he clearly has underlying depression and a significant psychiatric disorder that he likely would not be able to return to his work until this was treated. It's very possible that the claimant's psychiatric condition of severe depression and suicidal ideation is partly related to the trauma that he sustained, but also it may be due to an underlying primary psychiatric disorder, which may be unrelated to his injury.

. . .

As a result, from the neurologic standpoint, he could return to his full job, but as stated this would be limited now because of his underlying psychiatric condition. (Claimant's Exhibit No. 7 and Carrier's Exhibit H).

A medical report from Dr. K, the designated doctor, dated October 31, 2006, states that "[t]here is no doubt in my mind that he cannot go back to work in the condition that he presently is in, and that he needs further treatment for the psychiatric part of his condition." (Claimant's Exhibit No. 4).

In addition, four Work Status Reports (DWC-73) in evidence from the claimant's treating doctor, Dr. M, show that the claimant was taken off work due to the

compensable injury for the period of August 9, 2006, through “indefinitely.” (Claimant’s Exhibit No. 12). The DWC-73s in evidence list diagnosis codes “847.0” and “920.” Dr. M’s clinical notes dated July 26, 2006, indicate the diagnosis code for post trauma neck spasm is “847.0” and for post-concussion syndrome is “920.” The compensable injury includes both a cervical strain/sprain and post-concussion syndrome.

Under the facts of this case, the hearing officer’s determination that the claimant did not have disability is against the great weight and preponderance of the evidence given that he was hospitalized for his compensable injury from August 16 through August 26, 2006. Further medical reports in evidence indicate that the claimant cannot return to work because of his psychiatric condition, and subsequent DWC-73s from the treating doctor, Dr. M, has taken the claimant off work from August 9, 2006, through an “indefinite” period of time due to the compensable injury. There is no evidence to indicate that the claimant could return to work. Accordingly, we reverse the hearing officer’s disability determination that the claimant did not have disability beginning August 9, 2006, through the date of the CCH and render a new decision that the claimant had disability from August 9, 2006, through the date of the CCH.

### **SUMMARY**

We affirm the hearing officer’s extent of injury and carrier waiver determinations. We reverse the hearing officer’s disability determination that the claimant did not have disability beginning August 9, 2006, through the date of the CCH and render a new decision that the claimant had disability from August 9, 2006, through the date of the CCH.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** 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.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge