

APPEAL NO. 071925
FILED JANUARY 22, 2008

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 1, 2007. The two issues before the hearing officer were:

- (1) Does the compensable injury of _____ include chondromalacia, osteoarthritis, traumatic arthritis, degenerative arthritis and degenerative joint disease of the left knee?
- (2) Has the [appellant (self-insured)] waived the right to contest the compensability of the claimed degenerative joint disease and degenerative arthritis injury by not timely contesting the injuries in accordance with Section 409.021?

The hearing officer decided that: (1) the compensable injury of _____, includes chondromalacia, osteoarthritis, traumatic arthritis, degenerative arthritis, and degenerative joint disease of the left knee; and (2) the self-insured waived the right to contest the compensability of the claimed degenerative joint disease and degenerative arthritis injuries by not timely contesting the injuries in accordance with Section 409.021. The self-insured appealed the hearing officer's extent-of-injury and carrier waiver determinations. The appeal file does not contain a response from the respondent (claimant).

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that he injured his left knee when he stepped off a step at work. It is undisputed that the self-insured first received written notice of the injury on (day after date of injury).

CARRIER WAIVER

The hearing officer's decision that the self-insured waived the right to contest the compensability of the claimed degenerative joint disease and degenerative arthritis injuries by not timely contesting the injuries in accordance with Section 409.021 is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

That portion of the hearing officer's extent-of-injury determination that the claimant's compensable injury of _____, includes degenerative arthritis and

degenerative joint disease of the left knee based on self-insured's waiver is supported by the evidence and is affirmed.

With regard to the other extent-of-injury conditions at issue (chondromalacia, osteoarthritis and traumatic arthritis), the hearing officer erred in determining that the claimant's compensable injury of _____, includes chondromalacia, osteoarthritis, and traumatic arthritis.

The hearing officer found that the compensable injury of _____, did not include chondromalacia, osteoarthritis, and traumatic arthritis because these conditions were not "worsened or accelerated" by the compensable injury of _____. (Finding of Fact No. 3) This finding was not appealed. However, the hearing officer also found that the chondromalacia, osteoarthritis, and traumatic arthritis became compensable by virtue of self-insured's waiver. The hearing officer's Finding of Fact No. 4 states:

4. On or before November 1, 2006, the [self-insured] knew, or should have known through the exercise of reasonable diligence, that the injury to the left knee may have included an aggravation of the claimant's pre-existing chondromalacia and degenerative arthritis of the left knee, **alternately referred to** as osteoarthritis, traumatic arthritis, degenerative arthritis and degenerative joint disease of the left knee. (Emphasis added.)¹

Also, unappealed Finding of Fact No. 6, states that:

6. The [self-insured] did not dispute the compensability of the claimant's chondromalacia and degenerative arthritis of the left knee, **alternately referred to** as osteoarthritis, traumatic arthritis, degenerative arthritis and degenerative joint disease of the left knee, within 60 days of the date of its receipt of written notice of the claimant's _____, injury. (Emphasis added.)

As asserted by the self-insured, the hearing officer erred in determining that the claimant's compensable injury of _____, extends to chondromalacia, osteoarthritis, and traumatic arthritis because the waiver issue did not include these specified conditions. Given that these conditions were not included in the limited waiver issue and they were not litigated by the parties as being waived, it was error for the hearing officer to find these conditions compensable by virtue of self-insured's waiver.

¹ Review of the record shows there is no medical record that establishes that the chondromalacia and degenerative arthritis conditions were "**alternately referred to**" as osteoarthritis, traumatic arthritis, degenerative arthritis and degenerative joint disease of the left knee as stated in the hearing officer's findings of fact. (Emphasis added.)

Accordingly, we reverse that portion of the hearing officer's extent-of-injury determination that the claimant's compensable injury of _____, includes chondromalacia, osteoarthritis, and traumatic arthritis, and we render a new decision that the claimant's compensable injury of _____, does not include chondromalacia, osteoarthritis, or traumatic arthritis.

SUMMARY

We affirm the hearing officer's determination that the self-insured waived the right to contest the compensability of the claimed degenerative joint disease and degenerative arthritis injuries by not timely contesting the injuries in accordance with Sections 409.021 and 409.022. We affirm that portion of the hearing officer's extent-of-injury determination that the claimant's compensable injury of _____, includes degenerative arthritis and degenerative joint disease of the left knee. We reverse that portion of the hearing officer's extent-of-injury determination that the claimant's compensable injury of _____, includes chondromalacia, osteoarthritis, and traumatic arthritis, and we render a new decision that the claimant's compensable injury of _____, does not include chondromalacia, osteoarthritis, or traumatic arthritis.

The true corporate name of the insurance carrier is **a governmental entity self-insured** and the name and address of its registered agent for service of process is

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge