

APPEAL NO. 080331
MAY 1, 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 (CCH) was held on June 12, 2007, with the record closing on January 24, 2008. The issues before the hearing officer were:

- (1) Has the appellant (self-insured) waived the right to contest the compensability of: (1) sciatica; (2) degeneration of a lumbar disc; (3) lumbar radiculopathy; (4) multiple lumbar disc bulging; (5) lumbar radiculitis; (6) an L3-4 annular tear; (7) an L5-S1 annular tear; (8) an L5-S1 3-4 mm disc protrusion; (9) L4 radiculopathy; (10) L5 radiculopathy; (11) S1 radiculopathy; (12) L5-S1 degenerative disc disease; (13) brachia neuritis/radiculitis; (14) cervical radiculopathy; (15) cervicalgia; (16) multilevel cervical disc bulging; (17) thoracic radiculitis; (18) a cervical strain; (19) a C5-6 disc herniation; (20) C5-6 stenosis; (21) a C3-4 disc bulge; (22) a C4-5 disc bulge; (23) degeneration of a cervical disc; (24) degeneration of a thoracic disc; (25) disc displacement without myelopathy; and (26) the left shoulder?
- (2) Did the compensable injury of _____, include: (1) sciatica; (2) degeneration of a lumbar disc; (3) lumbar radiculopathy; (4) multiple lumbar disc bulging; (5) lumbar radiculitis; (6) an L3-4 annular tear; (7) an L5-S1 annular tear; (8) an L5-S1 3-4 mm disc protrusion; (9) L4 radiculopathy; (10) L5 radiculopathy; (11) S1 radiculopathy; (12) L5-S1 degenerative disc disease; (13) brachia neuritis/radiculitis; (14) cervical radiculopathy; (15) cervicalgia; (16) multilevel cervical disc bulging; (17) thoracic radiculitis; (18) a cervical strain; (19) a C5-6 disc herniation; (20) C5-6 stenosis; (21) a C3-4 disc bulge; (22) a C4-5 disc bulge; (23) degeneration of a cervical disc; (24) degeneration of a thoracic disc; (25) disc displacement without myelopathy; and (26) the left shoulder?
- (3) Did the respondent (claimant) have disability resulting from an injury sustained on _____, from April 1, 2006, to the present?

The hearing officer determined that the self-insured waived the right to contest compensability of: (1) sciatica; (2) degeneration of a lumbar disc; (3) lumbar radiculopathy; (4) multiple lumbar disc bulging; (5) lumbar radiculitis; (6) cervical radiculopathy; (7) cervicalgia; (8) multilevel cervical disc bulging; (9) thoracic radiculitis; and (10) a cervical strain. The hearing officer determined that the self-insured did not waive the right to contest compensability of: (1) an L3-4 annular tear; (2) an L5-S1 annular tear; (3) an L5-S1 3-4 mm disc protrusion; (4) L4 radiculopathy; (5) L5

radiculopathy; (6) S1 radiculopathy; (7) L5-S1 degenerative disc disease; (8) brachia neuritis/radiculitis; (9) a C5-6 disc herniation; (10) C5-6 stenosis; (11) a C3-4 disc bulge; (12) a C4-5 disc bulge; (13) degeneration of a cervical disc; (14) degeneration of a thoracic disc; (15) disc displacement without myelopathy; and (16) a left shoulder injury.

The hearing officer determined that the compensable injury of _____, includes (either due to waiver or based on causation or both): (1) sciatica; (2) degeneration of a lumbar disc; (3) lumbar radiculopathy; (4) multiple lumbar disc bulging; (5) lumbar radiculitis; (6) an L3-4 annular tear; (7) an L5-S1 annular tear; (8) an L5-S1 3-4 mm disc protrusion; (9) L4 radiculopathy; (10) L5 radiculopathy; (11) S1 radiculopathy; (12) L5-S1 degenerative disc disease; (13) cervical radiculopathy; (14) cervicgia; (15) multilevel cervical disc bulging; (16) thoracic radiculitis; and (17) a cervical strain. The hearing officer determined that the compensable injury of _____, does not include the left shoulder injury. Although listed in the issue of extent of injury, the hearing officer made no determination as to whether the compensable injury of _____, includes: (1) brachia neuritis/radiculitis; (2) C5-6 disc herniation; (3) C5-6 stenosis; (4) a C3-4 disc bulge; (5) a C4-5 disc bulge; (6) degeneration of a cervical disc; (7) degeneration of a thoracic disc; and (8) disc displacement without myelopathy.

The hearing officer determined that the claimant had disability from April 1, 2006, through the date of the CCH.

The self-insured appealed the hearing officer's determinations on waiver and extent of injury to the extent those determinations are adverse to it. The self-insured also appealed the disability determination. There is no appeal of those portions of the hearing officer's determinations on waiver and extent of injury that are adverse to the claimant. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

SELF-INSURED WAIVER

The hearing officer's decision on that portion of the waiver issue appealed by the self-insured is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's decision on that portion of the issue of extent of injury appealed by the self-insured is supported by sufficient evidence and is affirmed.

The hearing officer failed to make a finding of fact, a conclusion of law, or a decision regarding the extent of injury conditions of: (1) brachia neuritis/radiculitis; (2) C5-6 disc herniation; (3) C5-6 stenosis; (4) a C3-4 disc bulge; (5) a C4-5 disc bulge; (6)

degeneration of a cervical disc; (7) degeneration of a thoracic disc; and (8) disc displacement without myelopathy. Accordingly, we remand this case for the hearing officer to make a determination on the issue of whether the compensable injury of _____, extends to include: (1) brachia neuritis/radiculitis; (2) C5-6 disc herniation; (3) C5-6 stenosis; (4) a C3-4 disc bulge; (5) a C4-5 disc bulge; (6) degeneration of a cervical disc; (7) degeneration of a thoracic disc; and (8) disc displacement without myelopathy.

DISABILITY

The hearing officer's decision that the claimant had disability from April 1, 2006, through the date of the CCH is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's decision on that portion of the waiver issue appealed by the self-insured. We affirm the hearing officer's decision on that portion of the issue of extent of injury appealed by the self-insured. We affirm the hearing officer's decision that the claimant had disability from April 1, 2006, through the date of the CCH.

We reverse and remand this case for the hearing officer to make a determination on the issue of whether the compensable injury of _____, extends to include: (1) brachia neuritis/radiculitis; (2) C5-6 disc herniation; (3) C5-6 stenosis; (4) a C3-4 disc bulge; (5) a C4-5 disc bulge; (6) degeneration of a cervical disc; (7) degeneration of a thoracic disc; and (8) disc displacement without myelopathy.

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 060721, decided June 12, 2006.

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

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge