

APPEAL NO. 080340
FILED MAY 12, 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 February 4, 2008. The two disputed issues were:

1. Whether the appellant (carrier) waived the right to contest compensability of the: (1) left sided facet degenerative disease at L1-L2; (2) congenitally shortened pedicles with bilateral facet degeneration at L2-L3; (3) congenitally shortened pedicles and bilateral facet degenerative disease and a broad based protrusion at L3-L4; (4) congenitally shortened pedicles and mild bilateral facet disease and a broad based protrusion with bilateral neural foraminal encroachment at L4-L5; (5) bilateral facet degenerative disease and a three millimeter left sided osteophyte off the left facet causing left neural foraminal encroachment at L5-S1; (6) lumbar disc displacement without myelopathy; (7) congenital spinal stenosis of the lumbar spine; (8) lumbar spondylosis; (9) herniated disc at L4-L5; (10) lumbar radiculopathy; and (11) left hip trochanteric bursitis by not timely contesting the diagnoses in accordance with Section 409.021.

2. Does the compensable injury of _____, include or extend to include: (1) left sided facet degenerative disease at L1-L2; (2) congenitally shortened pedicles with bilateral facet degeneration at L2-L3; (3) congenitally shortened pedicles and bilateral facet degenerative disease and a broad based protrusion at L3-L4; (4) congenitally shortened pedicles and mild bilateral facet disease and a broad based protrusion with bilateral neural foraminal encroachment at L4-L5; (5) bilateral facet degenerative disease and a three millimeter left sided osteophyte off the left facet causing left neural foraminal encroachment at L5-S1; (6) lumbar disc displacement without myelopathy; (7) congenital spinal stenosis of the lumbar spine; (8) lumbar spondylosis; (9) herniated disc at L4-L5; (10) lumbar radiculopathy; and (11) left hip trochanteric bursitis.

The hearing officer determined that the carrier waived the right to contest compensability of all of the conditions identified in the waiver issue, except for lumbar radiculopathy and lumbar spondylosis.

The hearing officer also determined that the compensable injury of _____, includes (either due to waiver or based on causation or both) all of the conditions listed in the issue on extent of injury, except for lumbar spondylosis.

However, the hearing officer made a conflicting determination on the issue of extent of injury, determining that many of the conditions that she had determined the carrier had waived the right to contest compensability of are not included in the compensable injury.

The carrier appealed the hearing officer's determinations on the waiver and extent-of-injury issues to the extent those determinations are adverse to it. The file does not contain a response from the respondent (claimant).

DECISION

Affirmed in part, reformed in part, and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury in the form of a lumbar strain and lumbar disc protrusions at L3-L4 and L4-L5, on _____, and that the carrier first received written notice of the injury on March 12, 2007.

CLERICAL CORRECTION

First we note the hearing officer's decision contained two Conclusions of Law No. 5. We reform the hearing officer's decision to consecutively renumber the Conclusions of Law Nos. 1 through 7.

WAIVER

The hearing officer's determination on the carrier waiver issue, except for the determination on congenital spinal stenosis, is supported by sufficient evidence and is affirmed. The evidence reflects that the carrier could not have reasonably discovered in its investigation prior to the expiration of the 60-day waiver period a diagnosis of spinal stenosis because that was not diagnosed until after the expiration of the waiver period. Consequently, we reverse the hearing officer's determination that the carrier waived the right to contest compensability of congenital spinal stenosis and render a decision that the carrier did not waive the right to contest compensability of congenital spinal stenosis. See Appeals Panel Decision (APD) 041738-s, decided September 8, 2004.

EXTENT OF INJURY

As previously noted, the hearing officer made conflicting determinations on the issue of the extent of the compensable injury. The same conditions are listed in the waiver issue and the issue on the extent of the compensable injury. When the carrier waives the right to contest compensability, compensability is established as a matter of law. APD 041738-s, *supra*. Consequently all of the conditions that the carrier waived the right to contest compensability of are included in the compensable injury. The carrier waived the right to contest compensability all of the conditions listed in the waiver issue, except for lumbar radiculopathy and lumbar spondylosis (not appealed by the parties) and congenital spinal stenosis (as determined in this decision). Accordingly, we

reverse Conclusion of Law No. 4 and the decision of the hearing officer to the extent Conclusion of Law No. 4 and the hearing officer's decision determine that conditions the carrier waived the right to contest compensability of are not included in the compensable injury and we render a decision that the conditions the carrier waived the right to contest compensability of are included in the compensable injury.

The hearing officer's other determinations on the extent-of-injury issue, which determine that the compensable injury of _____, includes all of the conditions listed in the issue on extent of injury, except for lumbar spondylosis, are supported by sufficient evidence and are affirmed, with the exception of congenital spinal stenosis. The hearing officer found that the claimant did not sustain or aggravate congenital spinal stenosis in the course and scope of his employment on _____, and that congenital spinal stenosis is not a direct and natural result of the compensable injury. In addition, we have reversed the hearing officer's determination that the carrier waived the right to contest compensability of congenital spinal stenosis. Accordingly, we reverse the hearing officer's determination that the compensable injury includes congenital spinal stenosis and render a decision that the compensable injury does not include congenital spinal stenosis.

SUMMARY

We affirm the hearing officer's determination on the carrier waiver issue, except for the determination regarding congenital spinal stenosis. We reverse the hearing officer's determination that the carrier waived the right to contest compensability of congenital spinal stenosis and render a decision that the carrier did not waive the right to contest compensability of congenital spinal stenosis.

We reverse Conclusion of Law No. 4 and the decision of the hearing officer to the extent Conclusion of Law No. 4 and the hearing officer's decision determine that conditions the carrier waived the right to contest compensability of are not included in the compensable injury and we render a decision that the conditions the carrier waived the right to contest compensability of are included in the compensable injury.

The hearing officer's other determinations on the issue of extent of injury, which determine that the compensable injury of _____, includes all of the conditions listed in the issue of extent of injury, except for lumbar spondylosis, are affirmed, with the exception of the determination on congenital spinal stenosis. We reverse the hearing officer's determination that the compensable injury includes congenital spinal stenosis and render a decision that the compensable injury does not include congenital spinal stenosis.

Therefore, the carrier waived the right to contest compensability of all of the conditions listed in the waiver issue except for lumbar radiculopathy, lumbar spondylosis, and congenital spinal stenosis. The compensable injury of _____, includes all of the conditions listed in the issue on extent of injury except for lumbar spondylosis and congenital spinal stenosis. Lumbar radiculopathy, although not

waived, was determined by the hearing officer to be included in the compensable injury and we have affirmed that determination.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 N. ST. PAUL
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge