

APPEAL NO. 080445
FILED MAY 30, 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 March 4, 2008. The issues before the hearing officer were:

- (1) Does the compensable injury of _____, extend to include the diagnoses of left knee internal derangement after March 17, 2006, and a left knee medial meniscus tear?
- (2) Did the appellant/cross-respondent (claimant) have disability from the _____, compensable injury from June 21, 2005, to July 28, 2005?

The hearing officer determined that: (1) the compensable injury of _____, does extend to include the diagnosis of left knee internal derangement after March 17, 2006, but does not extend to include the left knee medial meniscus tear; and (2) the claimant sustained disability from June 21, 2005, to July 28, 2005, but not thereafter through the date of the CCH.

The claimant appeals the hearing officer's determination that the compensable injury does not extend to include the left knee medial meniscus tear. The claimant also appeals the hearing officer's disability determination arguing that the hearing officer exceeded the scope of the issue by determining a period of disability that was outside the period covered by the issue at the CCH. The respondent/cross-appellant (carrier) responded to the claimant's appeal, urging affirmance.

The carrier appealed, arguing that the hearing officer abused his discretion by denying the carrier's request to amend the extent-of-injury issue to exclude the diagnosis of left knee internal derangement. The carrier also appealed the hearing officer's determinations that the compensable injury extends to include the diagnosis of left knee internal derangement after March 17, 2006, and that the claimant had disability from June 21 to July 28, 2005. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

ABUSE OF DISCRETION

The hearing officer did not abuse his discretion in denying the carrier's request to amend the extent-of-injury issue to exclude the diagnosis of left knee internal derangement. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

EXTENT OF INJURY

The hearing officer's extent-of-injury determinations are supported by sufficient evidence and are affirmed.

DISABILITY

The disability issue was amended by agreement of the parties during the CCH to specify a time period of disputed disability from June 21 to July 28, 2005. There is sufficient evidence to support the determination that the claimant had disability from June 21 through July 28, 2005, and we affirm that portion of the hearing officer's disability determination. There was no evidence offered by either party concerning the period from July 28, 2005, through the date of the CCH. While consent may be inferred if the parties actually litigated an issue not otherwise identified, the record in this case does not establish that the parties litigated disability after July 28, 2005. We consider all findings by the hearing officer regarding disability after July 28, 2005, to be beyond the scope of the issue.

Accordingly, we hold that those portions of the hearing officer's determinations (Finding of Fact No. 7, Conclusion of Law No. 4 and the Decision) that the compensable injury of _____, was not a cause of claimant's inability to obtain and retain employment at wages equivalent to his preinjury wage after July 28, 2005, through the date of the CCH, exceeded the scope of the disputed issue before him. We reverse the hearing officer's decision that the claimant did not have disability after July 28, 2005, through the date of the CCH and we render a decision striking from Finding of Fact No. 7, Conclusion of Law No. 4, and the hearing officer's Decision the language determining the claimant did not have disability after July 28, 2005, through the date of the CCH because that determination exceeded the scope of the disability issue.

SUMMARY

We affirm the hearing officer's extent-of-injury determinations and the determination that the claimant sustained disability from June 21 to July 28, 2005. We reverse the hearing officer's determination that the claimant did not have disability after July 28, 2005, through the date of the CCH and we render a decision striking from Finding of Fact No. 7, Conclusion of Law No. 4, and the hearing officer's Decision the language determining the claimant did not have disability after July 28, 2005, through the date of the CCH because that determination exceeded the scope of the disability issue.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge