

APPEAL NO. 080456
FILED MAY 27, 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 26, 2008. The issues before the hearing officer were:

- (1) Does the compensable injury of _____, extend to and include: (1) anxiety; (2) depression; (3) 2mm disc protrusion at C5/6; (4) cervical disc displacement; (5) cervical radiculopathy; (6) 2mm disc protrusion at L4/5; (7) lumbar radiculopathy; (8) lumbar disc displacement; (9) right shoulder bursitis; (10) myofascial pain syndrome; (11) (brain) cerebellar tonsils pointed in contour and projecting 5mm below the foramen magnum (which is lower limits of accepted normal); and (12) (brain) 7mm dilated perivascular space in typical location adjacent to the left anterior commissure?

- (2) Did the appellant (carrier) waive the right to contest compensability of the: (1) anxiety; (2) depression; (3) 2mm disc protrusion at C5/6; (4) cervical disc displacement; (5) cervical radiculopathy; (6) 2mm disc protrusion at L4/5; (7) lumbar radiculopathy; (8) lumbar disc displacement; (9) right shoulder bursitis; (10) myofascial pain syndrome; (11) (brain) cerebellar tonsils pointed in contour and projecting 5mm below the foramen magnum (which is lower limits of accepted normal); and (12) (brain) 7mm dilated perivascular space in typical location adjacent to the left anterior commissure by not contesting the diagnoses in accordance with Sections 409.021 and 409.022?

The hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes: (1) anxiety; (2) depression; (3) 2mm disc protrusion at C5/6; (4) cervical disc displacement; (5) 2mm disc protrusion at L4/5; (6) lumbar disc displacement; (7) right shoulder bursitis; and (8) myofascial pain syndrome. The hearing officer determined that the claimant's compensable injury of _____, does not extend to and include: (1) cervical radiculopathy; (2) lumbar radiculopathy; (3) (brain) cerebellar tonsils pointed in contour and projecting 5mm below the foramen magnum (which is lower limits of accepted normal); and (4) (brain) 7mm dilated perivascular space in typical location adjacent to the left anterior commissure.

The hearing officer determined that the carrier waived the right to contest compensability of the: (1) 2mm disc protrusion at C5/6; (2) cervical disc displacement; (3) 2mm disc protrusion at L4/5; (4) lumbar disc displacement; and (5) right shoulder bursitis. The hearing officer determined that the carrier did not waive the right to contest compensability of the: (1) anxiety; (2) depression; (3) cervical radiculopathy; (4) lumbar radiculopathy; (5) myofascial pain syndrome; (6) (brain) cerebellar tonsils pointed in

contour and projecting 5mm below the foramen magnum (which is lower limits of accepted normal); and (7) (brain) 7mm dilated perivascular space in typical location adjacent to the left anterior commissure.

The carrier appealed the hearing officer's determinations on waiver and extent of injury to the extent those determinations are adverse to it. 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 rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. There is no appeal of the hearing officer's determinations that the carrier received first written notice of the claimed injury on November 8, 2006, and that the 60-day waiver period for contesting the injury expired on January 8, 2007.¹

EXTENT OF INJURY

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

CARRIER WAIVER

The hearing officer's determination on that portion of the carrier waiver issue appealed by the carrier, except for the determination on cervical disc displacement, 2mm disc protrusion at L4-5, and lumbar disc displacement, 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 cervical disc displacement, 2mm disc protrusion at L4-5, and lumbar disc displacement because those conditions were 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 cervical disc displacement, 2mm disc protrusion at L4-5, and lumbar disc displacement and render a decision that the carrier did not waive the right to contest compensability of cervical disc displacement, 2mm disc protrusion at L4-5, and lumbar disc displacement. See Appeals Panel Decision 041738-s, decided September 8, 2004.

SUMMARY

We affirm the hearing officer's decision on that portion of the extent-of-injury issue appealed by the carrier. We affirm the hearing officer's determination on that

¹ The hearing officer found that the 60th day after November 8, 2006, is January 7, 2007; however, that date is a Sunday, and not a working day. The first working day after January 7, 2007, is January 8, 2007. See 28 TEX. ADMIN. CODE § 102.3(b) (Rule 102.3(b)).

portion of the carrier waiver issue appealed by the carrier, except for the determinations on cervical disc displacement, 2mm disc protrusion at L4-5, and lumbar disc displacement. We reverse the hearing officer's determinations that the carrier waived the right to contest compensability of the cervical disc displacement, 2mm disc protrusion at L4-5, and lumbar disc displacement and render a decision that the carrier did not waive the right to contest compensability of the cervical disc displacement, 2mm disc protrusion at L4-5, and lumbar disc displacement.

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

**MR. RUSSELL RAY OLIVER, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge