

APPEAL NO. 080532  
FILED JUNE 2, 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 March 6, 2008. The issues before the hearing officer were:

- (1) Does the \_\_\_\_\_, compensable injury include right knee osteoarthritis and chondromalacia?
- (2) Has the appellant (carrier) waived the right to contest compensability of the right knee osteoarthritis and chondromalacia by not timely contesting those conditions in accordance with Sections 409.021 and 409.022?

The hearing officer determined that the respondent's (claimant) \_\_\_\_\_, compensable injury includes right knee osteoarthritis and chondromalacia. The hearing officer determined that the carrier waived the right to contest compensability of the right knee osteoarthritis and chondromalacia. The carrier appealed the hearing officer's determinations on waiver and extent of injury. The appeal file does not contain a response from the claimant.

#### DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. It is undisputed that the carrier received first written notice of the claimed injury on December 22, 2006, and that the 60-day waiver period for contesting the injury expired on February 20, 2007. A Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) dated March 15, 2007, states that the carrier has accepted a right medial meniscus tear. The hearing officer found that the right knee osteoarthritis is not a result naturally flowing from the \_\_\_\_\_, injury; however, because the carrier waived the right to contest compensability of the right knee osteoarthritis, that condition became compensable by virtue of waiver. The hearing officer found that the right knee chondromalacia is a result naturally flowing from the \_\_\_\_\_, injury.

#### EXTENT OF INJURY

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

## **CARRIER WAIVER**

The hearing officer's determination that the carrier waived the right to contest compensability of the right knee osteoarthritis 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 right knee chondromalacia because that condition was not diagnosed until after the expiration of the waiver period. The hearing officer based his decision that the carrier waived the right to contest compensability of the right knee chondromalacia on an interpretation of a MRI of the right knee made by a doctor after the expiration of the waiver period. Right knee chondromalacia was not a specific impression given on the MRI report of the right knee dated February 6, 2007. Consequently, we reverse the hearing officer's determination that the carrier waived the right to contest compensability of the right knee chondromalacia and render a decision that the carrier did not waive the right to contest compensability of the right knee chondromalacia. See Appeals Panel Decision 041738-s, decided September 8, 2004.

## **SUMMARY**

We affirm the hearing officer's decision that the claimant's compensable injury of \_\_\_\_\_, includes right knee osteoarthritis and chondromalacia. We affirm the hearing officer's determination that the carrier waived the right to contest compensability of the right knee osteoarthritis. We reverse the hearing officer's determination that the carrier waived the right to contest compensability of the right knee chondromalacia and render a new decision that the carrier did not waive the right to contest compensability of the right knee chondromalacia.

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

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

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge