

APPEAL NO. 080564  
FILED MAY 20, 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 February 4, 2008, with the record closing on February 21, 2008. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of \_\_\_\_\_, does extend to include the lumbar spine L3-4 bulge, L4-5 bulge, L5-S1 disc protrusion and L4-5 radiculopathy; (2) the respondent (carrier) did not waive the right to contest compensability of the aforementioned diagnoses by not timely contesting them in accordance with Sections 409.021 and 409.022; (3) the appellant (claimant) reached maximum medical improvement (MMI) on June 26, 2004; (4) the claimant's impairment rating (IR) is 14%; and (5) the Texas Department of Insurance, Division of Workers' Compensation (Division) abused its discretion in appointing Dr. C as a second designated doctor.

The claimant appealed, contending that: (1) the hearing officer failed to make a determination on the issue of disability for the period of February 3, 2003, through the date of MMI; and (2) the hearing officer applied an incorrect legal standard to determine the issue of carrier waiver by applying Section 409.021 as it existed prior to being amended, effective September 1, 2003. The carrier responded, urging affirmance of the waiver determination and agreed that the hearing officer failed to make a determination on disability. The determinations that: (1) the compensable injury extended to include the lumbar spine L3-4 bulge, L4-5 bulge, L5-S1 disc protrusion, and L4-5 radiculopathy; (2) the claimant reached MMI on June 26, 2004; (3) the claimant's IR is 14%; and (4) that the Division abused its discretion appointing Dr. C as a second designated doctor were not appealed and have become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. An issue before the hearing officer at the CCH was whether the claimant had disability resulting from a compensable injury for the period of February 3, 2003, through the date of MMI.

**CARRIER WAIVER**

The hearing officer's decision that the carrier did not waive the right to contest compensability of the lumbar spine L3-4 bulge, L4-5 bulge, L5-S1 disc protrusion, and L4-5 radiculopathy by not timely contesting the diagnoses in accordance with Section 409.021 is supported by sufficient evidence and is affirmed.

## DISABILITY

In the Background Information, the hearing officer stated that the “[c]laimant sustained her burden of proof regarding the extent of injury and disability;” however, she failed to make any finding of fact, conclusion of law, or decision regarding disability. The hearing officer erred in failing to address the disputed dates of disability before her. Accordingly, we reverse the hearing officer’s decision as being incomplete and remand the case for the hearing officer to consider and make findings of fact, conclusions of law, and a decision on the claimed periods of disability. No additional evidence is required.

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 Division, 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 **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DR., SUITE 700  
DALLAS, TEXAS 75251.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge