

APPEAL NO. 081016
FILED SEPTEMBER 10, 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 31, 2008, and concluded on June 3, 2008. The two issues before the hearing officer were:

1. Does the compensable injury of _____, include radiculopathy and a displaced disc at L4/5 and L5/S1?
2. Has the appellant (carrier) waived the right to contest compensability of the radiculopathy and a displaced disc at L4/5 and L5/S1 by not timely contesting the diagnoses in accordance with Texas Labor Code, Section 409.021 and Section 409.022?

The hearing officer determined that: (1) the compensable injury of _____, does not include radiculopathy and a displaced disc at L4/5 and L5/S1; (2) the carrier waived the right to contest compensability of the radiculopathy and the displaced disc at L5/S1 by not timely contesting the diagnoses in accordance with Section 409.021; and (3) the carrier did not waive the right to contest compensability of the displaced disc at L4/5 by not timely contesting the diagnosis in accordance with Section 409.021. (The Decision portion of the hearing officer's decision and order tracks the language of the Conclusions of Law).

The carrier appeals the determination that it waived the right to contest compensability of the radiculopathy and the displaced disc at L5/S1, contending: (1) that if there is no injury, there can be no compensable injury citing Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.); (2) the carrier could not have discovered the waived conditions within 60 days of the date it received the notice of injury; and (3) that the claimed conditions are an extent-of-injury issue not a waiver issue. Respondent 1 (claimant) responded, urging affirmance. The appeal file does not contain a response from respondent 2 (subclaimant). There is no appeal of the hearing officer's determination that the carrier did not waive the right to contest compensability of the displaced disc at L4/5 by not timely contesting the diagnosis in accordance with Section 409.021.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable lumbar strain and left hip contusion injury on _____; that the carrier received written notice of a claimed injury on November 6, 2002; and that (Dr. O) was appointed by the Texas Department of Insurance, Division of Workers' Compensation as the designated doctor.

The hearing officer, in the Background Information portion of his decision, comments, “[a]ccording to the documentary evidence, the medical terms of disc protrusion, disc extrusion, herniated disc, and displaced disc were used synonymously and interchangeably to describe the condition of Claimant’s discs at L4/5 and L5/S1.” How the terms were used and when they were first used was discussed at the CCH. Neither party, on appeal, has objected to the hearing officer’s statement.

The hearing officer’s determination that the carrier waived the right to contest compensability of the radiculopathy and the displaced disc at L5/S1 by not timely contesting the diagnoses in accordance with Section 409.021 is supported by the evidence and is affirmed.

In that we have affirmed the hearing officer’s determination that the carrier has waived the right to contest compensability of the radiculopathy and of the displaced disc at L5/S1, those conditions have become compensable as a matter of law. See Appeals Panel Decision 041738-s, decided September 8, 2004. Consequently, the hearing officer erred in determining that the compensable injury of _____, does not include radiculopathy and a displaced disc at L5/S1, because those conditions have been made compensable as a matter of law, based on carrier waiver. We reverse so much of Conclusion of Law No. 3 and the Decision portion of the hearing officer’s decision and order that hold that the compensable injury does not include radiculopathy and a displaced disc at L5/S1 as being erroneous as a matter of law and render a new decision that the compensable injury of _____, does include radiculopathy and a displaced disc at L5/S1, based on carrier waiver.

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

**JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge