

APPEAL NO. 081478
FILED DECEMBER 5, 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 September 11, 2008. The two issues before the hearing officer were:

1. Does the compensable injury extend to the cervical and lumbar IVD, cervical radiculopathy, cervicalgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain?
2. Has the respondent/cross-appellant (carrier) waived the right to contest compensability of the cervical and lumbar IVD, cervical radiculopathy, cervicalgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain by not timely contesting the injury in accordance with Sections 409.021 and 409.022?

The hearing officer determined that the carrier waived the right to contest compensability of the cervical and lumbar IVD, cervicalgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain by not timely contesting the injury pursuant to Section 409.021 and that the carrier did not waive the right to contest compensability of cervical radiculopathy. The hearing officer further determined in Conclusion of Law No. 4:

4. The compensable injury does extend to include the cervical and lumbar IVD, cervical radiculopathy, cervicalgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain. The compensable injury does not extend to include cervical radiculopathy. [Emphasis added.]

The appellant/cross-respondent (claimant) specifically appealed the hearing officer's extent-of-injury finding and that portion of the carrier waiver issue that the carrier did not waive the right to contest compensability of the cervical radiculopathy. The claimant specifically appealed Conclusion of Law No. 4, quoted above. The carrier generally appealed the hearing officer's unfavorable carrier waiver determinations on a sufficiency of the evidence basis. Both parties responded to the other's appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified how she was injured on _____, when some bags of material fell on her neck, back and head. The parties stipulated that the claimant sustained a compensable injury on _____, and that the carrier “accepted lumbar and cervical strains/sprains, a contusion to the head, and bilateral shoulder strains/sprains as compensable.”

WAIVER

The hearing officer determined that the carrier waived the right to contest compensability of the cervical and lumbar IVD, cervicgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain by not timely contesting the injuries in accordance with Sections 409.021 and 409.022. The hearing officer also determined that the carrier “did not waive the right to contest compensability of cervical radiculopathy by not timely contesting the injuries in accordance with [Sections] 409.021 and 409.022.” Those determinations are supported by sufficient evidence and are affirmed.

EXTENT OF INJURY

The hearing officer’s finding that the injuries of the cervical and lumbar IVD, cervical radiculopathy, cervicgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain did not arise out of or naturally flow from the compensable injury is supported by the evidence. However, we also affirm that portion of the hearing officer’s determination that the compensable injury extends to the cervical and lumbar IVD, cervicgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain, by virtue of carrier waiver. We affirm that portion of the hearing officer’s determination that the compensable injury does not extend to cervical radiculopathy.

As previously mentioned, in the hearing officer’s Conclusion of Law No. 4 and in the Decision portion of the hearing officer’s decision and order, the hearing officer makes determinations that the compensable injury both “does extend to include” and “does not extend to include” cervical radiculopathy. In that the evidence supports the finding that cervical radiculopathy did not arise out of or naturally flow from the compensable injury and that we have affirmed the determination that the carrier did not waive the right to contest compensability of cervical radiculopathy, we reverse so much of Conclusion of Law No. 4 and the Decision portion of the hearing officer’s decision and order that holds the compensable injury extends to cervical radiculopathy as being against the great weight and preponderance of the evidence. We render a new decision by striking that portion of Conclusion of Law No. 4 and the Decision portion of the hearing officer’s decision and order that states the compensable injury extends to cervical radiculopathy.

SUMMARY

We affirm the hearing officer's determinations that the carrier waived the right to contest compensability of the cervical and lumbar IVD, cervicalgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain by not timely contesting the injuries in accordance with Section 409.021 and that the carrier did not waive the right to contest compensability of cervical radiculopathy. We also affirm that portion of the hearing officer's determination that the compensable injury extends to the cervical and lumbar IVD, cervicalgia, cervical myospasms, the thoracic spine and bilateral shoulders beyond the accepted sprain/strain, by virtue of carrier waiver. We affirm that portion of the hearing officer's determination that the compensable injury does not extend to cervical radiculopathy.

We reverse so much of Conclusion of Law No. 4 and the Decision portion of the hearing officer's decision and order that the compensable injury extends to cervical radiculopathy. We render a new decision by striking that portion of Conclusion of Law No. 4 and the Decision portion of the hearing officer's decision and order that states the compensable injury extends to cervical radiculopathy.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge