

APPEAL NO. 090287
FILED APRIL 23, 2009

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 5, 2009. The disputed issues were:

1. Did the respondent (claimant) sustain a compensable repetitive trauma injury with a date of injury of _____?
2. Does the compensable injury sustained on _____, include: (1) left shoulder MRI findings dated December 14, 2008 (tendinopathy, partial tear of rotator cuff, "SLAP" lesion extending into the long head of the biceps tendon, partial subscapular tendon tear with subluxation of the long head of the biceps tendon out of the upper bicipital groove (referred to as the December 14, 2008, MRI findings)); and (2) right shoulder MRI findings dated December 7, 2008 (tendinopathy, partial tear supraspinatus segment rotator cuff without full-thickness tear; intrasubstance tear of the long head of the biceps tendon intra-articular portion without labral tear (referred to as the December 7, 2008, MRI findings))?

The hearing officer made findings of fact that: (1) the claimant sustained an injury to her body "on _____, due to repetitive work activities"; (2) the December 7, 2008, MRI findings "are not related to the employment injury" (Finding of Fact No. 4); (3) the December 14, 2008, MRI findings "are not related to the employment injury" (Finding of Fact No. 5); and (4) the "conditions identified in Findings 4 and 5 arose out of or naturally flowed from the employment." The hearing officer concluded that the claimant sustained a compensable injury in the form of an occupational disease on _____. The hearing officer did not make any determinations or reference in the decision portion of the decision and order regarding the extent-of-injury issue.

The appellant (self-insured) appealed, contending there was insufficient evidence to support the hearing officer's decision regarding the portions of the hearing officer's decision and order adverse to it and specifically commenting "[t]here is no decision, order, or conclusion of law regarding the extent of injury issue." The claimant responded, generally urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

BACKGROUND INFORMATION

It is undisputed that the claimant was employed as a “stocker” at one of the self-insured’s stores. The claimant alleges a repetitive trauma injury while moving and stocking boxes of merchandise.

COMPENSABLE REPETITIVE TRAUMA INJURY

The hearing officer’s determination that the claimant sustained a compensable injury in the form of an occupational disease (a repetitive trauma injury) on _____, is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer made inconsistent and conflicting findings on the extent-of-injury issue. In Findings of Fact Nos. 4 and 5, the hearing officer found the December 7, 2008, and December 14, 2008, MRI findings “not related to the employment injury” but in Finding of Fact No. 6, the hearing officer found the conditions in Findings of Fact Nos. 4 and 5 “arose out of or naturally flowed from the employment.” The hearing officer made no determinations at all on the extent-of-injury issue in his conclusions of law or in the decision portion of the decision and order.

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, which are not inconsistent and which are supported by the evidence. No new evidentiary hearing on remand is necessary.

SUMMARY

We affirm the hearing officer's determination that the claimant sustained a compensable injury in the form of an occupational disease (a repetitive trauma injury) on _____. We reverse the hearing officer's decision on the extent-of-injury issue as being incomplete and remand the case to the hearing officer for findings of fact, conclusions of law, and a decision consistent with this decision.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **(a certified self-insured)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge