

APPEAL NO. 090397
FILED MAY 21, 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 (CCH) was held on February 18, 2009. The hearing officer decided that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021; and (3) the claimant had disability resulting from the _____, compensable injury on August 7, August 8 and August 20, 2008, through the date of the CCH, but at no other times.

Also, the hearing officer decided that the compensable injury of _____, extends to: (1) straightening of the [cervical] lordotic curve due to muscle spasm; (2) C4-5 [posterior] protrusion-subligamentous disc herniation measuring 2.8-3.3 mm in AP diameter, in the central and right lateral aspect, causing slight right foraminal stenosis; (3) C5-6 posterior protrusion-subligamentous disc herniation measuring 2.8-3.3 mm in AP diameter, [in the central and left lateral aspect, causing moderate left foraminal stenosis]; (4) C3-4 central posterior protrusion-subligamentous disc herniation measuring 2-2.2 mm in AP diameter; (5) cyst within the C4 [vertebral] body measuring 6 mm in diameter [(1); (2); (3); (4); and (5) are listed in the cervical MRI impressions dated August 26, 2008]; (6) L5-S1 posterior protrusion-subligamentous disc herniation measuring 3-3.2 mm in AP diameter touching the thecal sac, and tear in the posterior annulus fibrosus [at this site]; hypertrophic changes [are noted] in the facet joints; facet synovitis; interior neural foraminal stenosis bilaterally [at this level]; (7) straightening of the lumbar lordotic curve due to muscle spasm [(6) and (7) are listed in the lumbar MRI impressions dated August 26, 2008]; and (8) post traumatic stress disorder.

The carrier appealed, disputing the hearing officer's determination of compensable injury and carrier waiver. Additionally, the carrier appealed that portion of the hearing officer's extent-of-injury determination that was adverse to it. The carrier also appealed that portion of the hearing officer's disability determination that the claimant had disability August 20, 2008, through the date of the CCH. The claimant responded, urging affirmance. That portion of the hearing officer's disability determination that the claimant had disability on August 7 and August 8, 2008, has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

COMPENSABLE INJURY AND CARRIER WAIVER

The hearing officer's decision that the claimant sustained a compensable injury on _____, is supported by sufficient evidence and is affirmed. The hearing

officer's decision that the carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021 is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's decision on that portion of the disability issue appealed by the carrier that the claimant had disability August 20, 2008, through the date of the CCH is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

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

Although listed in the benefit review conference report and agreed to by the parties at the CCH, the hearing officer failed to include in her decision with regard to the extent-of-injury issue whether the compensable injury of _____, extends to C6-7 central posterior protrusion-subligamentous disc herniation measuring 2.8-3.3 mm in AP diameter. We note that the hearing officer did not make a finding of fact, conclusion of law, or a decision on this condition. We also note that the parties did not agree to withdraw the alleged condition on the C6-7 level of the spine in dispute. Further, we note that the parties did not agree to a resolution of the alleged condition of the C6-7 level of the spine in dispute. The hearing officer's decision is incomplete as to the extent-of-injury condition at level C6-7.

The hearing officer failed to include in her decision whether the compensable injury of _____, extends to C6-7 central posterior protrusion-subligamentous disc herniation measuring 2.8-3.3 mm in AP diameter. See Appeals Panel Decision (APD) 080331, decided May 1, 2008, (the Appeals Panel remanded the case to the hearing officer to make a determination on a condition listed in the extent-of-injury issue in which that hearing officer failed to make a finding of fact, conclusion of law, or decision regarding that extent-of-injury condition). Accordingly, we reverse and remand this case for the hearing officer to make a determination on the issue of whether the compensable injury of _____, extends to C6-7 central posterior protrusion-subligamentous disc herniation measuring 2.8-3.3 mm in AP diameter.

SUMMARY

We affirm the hearing officer's decision on the issues of compensable injury and carrier waiver. We affirm the hearing officer's decision on that portion of the disability issue that the claimant had disability August 20, 2008, through the date of the CCH. We affirm that portion of the hearing officer's decision on the issue of extent of injury appealed by the carrier.

We reverse and remand this case for the hearing officer to make a determination on the issue of whether the compensable injury of _____, extends to C6-7 central posterior protrusion-subligamentous disc herniation measuring 2.8-3.3 mm in AP diameter.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701-3232.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge