

APPEAL NO. 090515  
FILED JUNE 12, 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 26, 2009 with the record closing on March 6, 2009. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of \_\_\_\_\_, does not extend to lumbar spine bulges from L3-S1, cervical spine bulges from C4-7, and bilateral carpal tunnel syndrome (CTS) and (2) the appellant (claimant) waived his ability to dispute the extent of the compensable injury of \_\_\_\_\_, by raising the dispute after the final payment of impairment income benefits (IIBs) for the compensable injury and by seeking dispute resolution more than three years after the last Texas Department of Insurance, Division of Workers' Compensation (Division) action on the claim. The claimant appealed, disputing the determinations that the compensable injury of \_\_\_\_\_, does not extend to lumbar spine bulges from L3-S1, cervical spine bulges from C4-7, and bilateral CTS and that the claimant waived the right to contest compensability of the claimed bilateral CTS, low back, and cervical disc pathology by not timely contesting the respondent's (self-insured) dispute of these diagnoses. The self-insured responded, urging affirmance.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant's impairment rating (IR) was not an issue before the hearing officer. Neither party argued that the IR had become final by operation of law or as a result of a decision issued by the Division. The hearing officer found that the claimant waived his ability to dispute the extent of the compensable injury of \_\_\_\_\_, because he raised the dispute after the final payment of IIBs and delayed an inordinate time before seeking dispute resolution.

**WAIVER**

The self-insured cites in its response Appeals Panel Decision (APD) 941333, decided November 21, 1994, quoting language that stated, "it is incumbent upon parties to activate any dispute there may be regarding the extent of injury before arriving at the point where the [IR] must be determined by the [h]earing [o]fficer." In the instant case, the claimant's IR was not an issue to be decided by the hearing officer.

In APD 040150-s, decided March 8, 2004, the Appeals Panel applied 28 TEX. ADMIN. CODE § 130.102(g) (Rule 130.102(g)), which concerns the finality of maximum medical improvement (MMI)/IR certifications if there is no pending MMI/IR dispute prior to the expiration of the first quarter of supplemental income benefits (SIBs), by stating:

Rule 130.1(c)(1) states that an IR is the percentage of permanent impairment of the whole body resulting from the current compensable injury. Section 401.011(24) defines IR as the percentage of permanent impairment of the whole body resulting from a compensable injury. Therefore, considering the definition of IR, we conclude that the IR was for the compensable injury and, thus, any injured body part or condition rated is included in the compensable injury under the facts of this case. Once the IR then became final pursuant to Rule 130.102(g), what was included in the underlying compensable injury was established.

As noted in APD 051082, decided June 28, 2005, the question is not so much waiver as it is finality of the IR and the underlying conditions which were rated in that IR. APD 051028-s, decided June 9, 2005, further explained:

The fact that the date of MMI and IR become final under these circumstances applies equally to the claimant and the carrier. A determination that the compensable injury extends to various other conditions not included in the IR will not allow the claimant to then challenge the date of MMI and/or the IR if there was no pending dispute regarding MMI and/or IR prior to the expiration of the first quarter of SIBs. However, once the first quarter of SIBs has expired and there has been no challenge of the MMI date and/or the IR, the claimant is not precluded from alleging that the compensable injury extends to include other conditions not included in the IR.

In the instant case, the claimant was not trying to change the IR previously determined but rather was claiming the compensable injury extended to include other conditions not previously litigated for this date of injury. As acknowledged in APD 040150-s, *supra*, injuries can evolve over time and claimants may allege that additional injuries or conditions are compensable. To hold otherwise would deprive claimants of rights specifically afforded to them under the 1989 Act. The claimant correctly notes in his appeal that there is no statutory authority or rule that provides a time frame for the claimant to pursue an extent-of-injury dispute.

The hearing officer's determination that the claimant waived his right to dispute the self-insured's denial of the extent-of-injury conditions alleged is incorrect as a matter of law. We reverse the hearing officer's decision that the claimant waived his ability to dispute the extent of the \_\_\_\_\_, compensable injury by raising the dispute after the final payment of IIBs for the compensable injury and by seeking dispute resolution more than three years after the last Division action on the claim. We render a new decision that the claimant did not waive the right to contest compensability of the claimed extent-of-injury conditions by not timely contesting the self-insured's dispute of these diagnoses.

## **EXTENT OF INJURY**

The hearing officer noted in the Background Information portion of his decision and order that “[a] preponderance of the medical evidence establishes that . . . lumbar spine bulges from L3-S1, cervical spine bulges from C4-C7, and bilateral [CTS] are not related to the compensable injury.” The hearing officer’s decision that the compensable injury of \_\_\_\_\_, does not extend to lumbar spine bulges from L3-S1, cervical spine bulges from C4-7, and bilateral CTS are supported by sufficient evidence and is affirmed.

## **SUMMARY**

We affirm the hearing officer’s decision that the compensable injury of \_\_\_\_\_, does not extend to lumbar spine bulges from L3-S1, cervical spine bulges from C4-7, and bilateral CTS.

We reverse the hearing officer’s decision that the claimant waived his ability to dispute the extent of the \_\_\_\_\_, compensable injury by raising the dispute after the final payment of IIBs for the compensable injury and by seeking dispute resolution more than three years after the last Division action on the claim. We render a new decision that the claimant did not waive the right to contest compensability of the claimed extent-of-injury conditions by not timely contesting the self-insured’s dispute of these diagnoses.

The true corporate name of the insurance carrier is a **self-insured governmental entity** and the name and address of its registered agent for service of process is

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

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge