

APPEAL NO. 090621
FILED JUNE 19, 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 March 10, 2009, with the record closing on March 27, 2009. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, does not extend to or include a herniated C5-6 disc. The claimant appealed the hearing officer's adverse determination. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

It was undisputed that the claimant sustained a compensable injury when she was involved in a motor vehicle accident (MVA) within the course and scope of her employment on _____. The claimant testified that she injured her low back and neck.

EXTENT OF INJURY

On _____, the date of the MVA, the claimant was examined and treated for a lumbar strain at (Healthcare Provider). In a medical report dated September 25, 2007, (Dr. K), the claimant's treating doctor, noted that the claimant stated that she had persistent bilateral forearm burning as well as neck and back burning since the MVA. Dr. K's impression was cervical and lumbar degenerative pain, possible disk herniation and stenosis. Dr. K sent the claimant for an EMG/NCV and a cervical MRI. The EMG/NCV study dated October 16, 2007, reported subtle electrophysiological evidence of cervical radiculopathy involving the left C6 nerve root. In a report dated November 6, 2007, Dr. K opined that the EMG showed a C6 radiculopathy. The December 17, 2007, cervical MRI report revealed the following finding at C5-6: "[t]here is disc space narrowing. A 4 mm right posterior protrusion indents the sac and the cord. There is mild central canal stenosis and mild right foraminal narrowing." Herniation of intervertebral disk is defined in Dorland's Illustrated Medical Dictionary, 28th Ed. as "protrusion of the nucleus pulposus or annulus fibrosus of the disk, which may impinge on nerve roots; called also *herniated disk*, *protruded disk*, and *ruptured disk*." In a report dated December 26, 2007, Dr. K stated that the cervical MRI did show some bulging and stenosis, especially at C5-6 consistent with her C6 radiculopathy by EMG. Dr. K in a report dated July 29, 2008, opined that "[b]ased on reasonable medical probability, the mechanism of injury described by [the claimant] would be consistent with the diagnosis/symptoms of disc herniation at C5-C6 & C6 radiculopathy."

A designated doctor, (Dr. C), was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to certify a date of maximum

medical improvement and impairment rating. In Dr. C's narrative report of February 12, 2008, he diagnosed cervical strain, lumbar strain, and herniated cervical disc and indicated that he reviewed the EMG/NCV study dated October 16, 2007, and the cervical MRI report dated December 17, 2007. Subsequently, on September 3, 2008, the Division appointed Dr. C to also determine the extent of the claimant's compensable injury. Dr. C re-examined the claimant on October 29, 2008, and opined that the extent of the claimant's compensable injury is a lumbar strain, left forearm strain, cervical strain, and herniated cervical disc at C5-6.

In a carrier requested peer review report dated December 3, 2007, (Dr. H) opined that the extent of the work-related injury is a cervical and lumbar strain. At the CCH, Dr. H testified that the cervical MRI findings, which were subsequently provided to him, did not change his previous opinion. Dr. H further testified that he has never examined the claimant and has never been provided with the designated doctor's report on extent of injury or with any medical report of the treating doctor other than those dated September 25, 2007, and November 6, 2007.

In the Discussion section of the decision and order, the hearing officer stated that the evidence contained in the record of the CCH does indicate that the "[c]laimant's compensable cervical injury is likely more severe than the strain diagnosed by [Dr. H]. However, the report of [c]laimant's December 17, 2007 MRI study reveals that the pathology at the spinal level in question consists of a protrusion, rather than a herniation. Since [c]laimant's medical records do not persuasively show that she has, in fact, sustained a cervical disc herniation, it must be determined that [c]laimant has not sustained a compensable cervical disc herniation." We disagree. Upon review of the December 17, 2007, cervical MRI report, the claimant's treating doctor and the designated doctor both diagnosed a herniated C5-6 disc and related the diagnosis to the compensable injury of _____. The hearing officer's determination that the compensable injury of _____, does not extend to or include a herniated C5-6 disc is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, we reverse the hearing officer's determination that the compensable injury of _____, does not extend to or include a herniated C5-6 disc and we render a new decision that that the compensable injury of _____, does extend to or include a herniated C5-6 disc.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge