

APPEAL NO. 091367
FILED OCTOBER 20, 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 August 17, 2009. With regard to the sole issue before him the hearing officer determined:

The compensable injury of _____, includes a 2-3 mm retrolisthesis (spondylolisthesis) at L3-4 with a 3 mm diffuse disc bulge and facet arthropathy and central canal stenosis, a 3 mm diffuse disc bulge at L4-5 with facet arthropathy and stenosis, L3-4 radiculopathy, and psychological problems, but does not include renal stones or diverticula.

The appellant (self-insured) appeals on a sufficiency of the evidence basis. The self-insured argued there was no evidence of any diagnosis of a "psychological problem." The respondent (claimant) responds, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: the claimant sustained a compensable injury on _____; the compensable injury does not include renal stones and diverticula; (Dr. P) was appointed as a designated doctor to determine extent of injury; and (Dr. B) was appointed as a designated doctor to determine maximum medical improvement (MMI)/impairment rating (IR).

EXTENT OF INJURY – LUMBAR SPINE

The hearing officer's determination that the claimant's compensable injury includes a 2-3 mm retrolisthesis (spondylolisthesis) at L3-4 with a 3 mm diffuse disc bulge and facet arthropathy and central canal stenosis, a 3 mm diffuse disc bulge at L4-5 with facet arthropathy and stenosis and L3-4 radiculopathy is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY – THE PSYCHOLOGICAL PROBLEMS

In treating the claimant's lumbar problems for his compensable injury, spinal surgery was considered and eventually recommended. In a report dated June 23, 2008, a treating doctor commented that the claimant "appears to be having a situational reactive repression type of issues, so I am going to recommend a psychological evaluation too that we will probably need before any surgical intervention is completed anyway." In evidence is a report dated January 2, 2009, from (Dr. AB) a psychologist in a pain management program. Dr. AB comments that the claimant has not had the spine

surgery for which he had evaluated the claimant “about 6 months ago.” (No other reports from Dr. AB are in evidence.) Dr. AB comments that the claimant has “a lot of difficulties with insurance authorizations” and concern about his finances. Dr. AB further comments that the claimant “is about the same psychologically, or perhaps a bit more reactively depressed, as when I saw him last.” Dr. AB concludes by saying that the claimant is “clear for the surgery” and surgery should proceed as soon as possible. The claimant eventually had spinal surgery on July 22, 2009.

The hearing officer in his Background Information, commented “[c]laimant has required psychological consultation for treatment of reactive depression related to the injury.” That statement is factually incorrect. The medical records make clear that the claimant was recommended for a psychological evaluation for clearance before spinal surgery. There is no evidence that the claimant was being treated for reactive depression by Dr. AB or anyone else. The treating doctor, (Dr. Pa), in his June 23, 2008, report only refers to situational reactive repression types of issues and recommends the claimant for a psychological evaluation which would be required before any surgical intervention. Dr. AB comments that the claimant is a bit more reactively depressed than before and comments on problems with insurance authorizations and finances before clearing the claimant for spinal surgery.

We note that nowhere in the records is there a diagnosis of a psychological disease or disorder. There is no evidence that the claimant was being treated for reactive depression by Dr. AB or anyone else nor is there any evidence or statement that the compensable injury was a cause of any reactive depression. Dr. P, the designated doctor appointed to evaluate the extent of injury, does not mention any psychological or mental problem in either the history or his evaluation. Dr. B, the designated doctor appointed to evaluate the claimant for MMI/IR, likewise does not mention or rate any psychological problems.

We hold that the hearing officer’s determination that the compensable injury of _____, includes psychological problems is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer’s determination that the compensable injury includes psychological problems and render a new decision that the compensable injury of _____, does not include psychological problems.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury of _____, includes a 2-3 mm retrolisthesis (spondylolisthesis) at L3-4 with a 3 mm diffuse disc bulge and facet arthropathy and central canal stenosis, a 3 mm diffuse disc bulge at L4-5 with facet arthropathy and stenosis and L3-4 radiculopathy.

We reverse the hearing officer’s determination that the compensable injury includes psychological problems and we render a new decision that the compensable injury does not include psychological problems.

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

**DO
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge