

APPEAL NO. 091390
FILED SEPTEMBER 10, 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 20, 2009, in Abilene, Texas. The hearing officer determined that the compensable injury of _____, includes an injury to the right knee, but not does include an injury to the lumbar spine. The appellant (carrier) appealed the hearing officer's determination that the compensable injury of _____, includes an injury to the right knee. The respondent (claimant) responded, urging affirmance. The hearing officer's determination that the compensable injury of _____, does not include an injury to the lumbar spine was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

At issue is whether the claimant's compensable left knee injury of _____, includes an injury to the right knee. 28 TEX. ADMIN. CODE § 126.7(c)(3) (Rule 126.7(c)(3)) provides that a designated doctor examination shall be used to resolve questions about the extent of the compensable injury. Rule 126.7(d) provides that the report of the designated doctor is given presumptive weight regarding the issues in question and/or dispute, unless the preponderance of the evidence is to the contrary. Rule 126.7 became effective on January 1, 2007, and provides in subsection (w) that a request for a designated doctor under its provisions may be made on or after January 1, 2007.

It is undisputed that the claimant sustained a left knee injury on _____, and (Dr. M) was appointed as the designated doctor to determine the extent of the compensable injury. In this case, the claimant offered into evidence a single page report dated February 4, 2009, from the treating doctor, (Dr. H), and the carrier offered into evidence a narrative report dated June 29, 2009, from the designated doctor, Dr. M. Both reports were admitted into evidence. No other documentary evidence was offered.

In Dr. M's narrative report dated June 29, 2009, he opines that the compensable injury of _____, does not include an injury to the right knee. In that report, Dr. M notes that the claimant's initial left knee injury occurred while climbing a ladder and that she subsequently underwent two left knee meniscectomies on October 28, 2004, and April 20, 2006, respectively. With regard to the right knee, Dr. M states that "[t]here is no additional findings in the records until 05/05/09, at which time it was stated by her treating physician [Dr. H] that her right knee problems have become chronic due to redistribution of weight because of her left knee problems and she developed low back pain. There is no other mention made." Dr. M notes that the claimant stated "that one

day she was getting up from a seated position and felt immediate pain in her right knee and was unable to put weight on it for approximately 3 days.”

Further, in his report Dr. M states that he examined the claimant’s right knee which showed that the claimant had: (1) full range of motion without an effusion; (2) mild medial joint line tenderness but a negative McMurray on clinical exam; (3) no palpable effusion; and (4) no gross medial or lateral collateral instability and a negative anterior drawer. Dr. M states that “if anything, the [claimant] may have sustained a tear of a meniscus on her right knee” when she “arose from a chair.” Additionally, Dr. M states that there is no orthopedic literature that a tear of a meniscus resulted simply from “meniscectomies in the opposite contralateral knee.” In summary, Dr. M stated that “there is no documentation that the right knee” is related to “the original injury and subsequent surgery for that injury.”

In Dr. H’s single page report dated February 4, 2009, he states that he examined the claimant’s left knee and discusses objective clinical findings of the left knee. In that report, Dr. H notes the claimant’s complaints about her right knee. However, it is unclear whether Dr. H examined the claimant’s right knee because there is no mention of objective clinical findings for the right knee. Dr. H notes that the claimant is having increased “complaints of difficulty with her right knee, which occasionally pops, snaps and gives out.” Based on the claimant’s complaints, Dr. H speculates that the current right knee problems are “all a direct reflection on the redistribution phenomenon” because the claimant “has to unload weight and redistribute weight and functional capability onto other joints that have to pick up that slack” due to the left knee problems. Dr. H recommended that the claimant have an MRI of the left knee. Additionally, Dr. H states “we will make further plans following that authorization” to evaluate and treat the “right knee.” Although Dr. H references a redistribution phenomenon in his report, he did not diagnose a specific condition for the right knee.

In the Background Information section of the decision, the hearing officer states that the preponderance of the evidence is contrary to the opinion of the designated doctor that the compensable injury does not extend to an injury to the right knee. As discussed, Dr. H’s report does not list any objective clinical findings or diagnose a specific condition for the right knee. Rather, Dr. H’s report indicates that he speculates that the “redistribution” of weight on the right knee due to the left knee problems, may have caused the claimant’s current right knee complaints.

Pursuant to Rule 126.7(d) the report of the designated doctor is given presumptive weight regarding the issue(s) in question and/or dispute, unless the preponderance of the evidence is to the contrary. There are no other reports in evidence from Dr. H, or from any other doctor, that establish that the compensable injury of _____, includes an injury to the right knee. The hearing officer’s finding that the claimant sustained damage or harm to her right knee as the direct and natural result of the redistribution phenomenon that developed following her compensable left knee injury and subsequent left knee surgeries 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 of _____, includes an injury to the right knee and we render a new decision that the compensable injury of _____, does not include an injury to the right knee.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge