

APPEAL NO. 091511  
FILED DECEMBER 7, 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 July 29, 2009, with the record closing on August 28, 2009. With regard to the disputed issues the hearing officer determined that the compensable injury of \_\_\_\_\_, includes a disc protrusion at L4-5 but does not include lumbar radiculopathy and a disc protrusion at L5-S1 and that the appellant/cross-respondent (claimant) had disability beginning on November 10, 2008, and continuing through the date of the CCH.

The claimant appealed, contending that the compensable injury includes a L5-S1 disc protrusion and lumbar radiculopathy. The respondent/cross-appellant (carrier) cross-appealed, contending that the medical evidence does not support that the compensable injury includes a disc protrusion at L4-5 or the disability determination. The carrier responded to the claimant's appeal and the claimant filed a response to the carrier's cross-appeal. That portion of the hearing officer's disability determination that the claimant did not have disability from October 10 through November 9, 2008, was not appealed and has become final pursuant to Section 410.169

#### DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant testified that he was a "body man" for an auto repair shop and that when he jumped from an automobile he slipped, split his legs and fell on his buttocks. The claimant was seen by several doctors, including (Dr. C) who returned him to work without restrictions. It is undisputed that (Dr. T) was a designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation to determine the extent of injury. In a report dated December 18, 2008, Dr. T noted that he had examined the claimant, and addressed the claimant's lumbar injury, specifically the lumbar radiculopathy and disc protrusions at L4-5 and L5-S1. Dr. T concluded "that at least one of the protrusions is compensable but that a radiculopathy is not." In response to a letter of clarification dated August 14, 2009, Dr. T explained why he believed the L5-S1 protrusion was "pre-existing" and not compensable but that the L4-5 protrusion was "more medically likely to be compensable."

#### EXTENT OF INJURY

The hearing officer's determination that the compensable injury of \_\_\_\_\_, includes a disc protrusion at L4-5 but does not include lumbar radiculopathy and a disc protrusion at L5-S1 is supported by sufficient evidence, and is affirmed.

## DISABILITY

Disability is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. As previously noted, Dr. C in a Work Status Report (DWC-73) dated October 12, 2006, diagnosed a left hip strain/sprain and returned the claimant to work without restrictions. Subsequent DWC-73s from Dr. C continued the same diagnosis and return to work without restrictions. An MRI performed on April 10, 2007, had an impression of the L4-5 protrusion and a bulging L5-S1 disc with central protrusion. Dr. C in a DWC-73 dated April 18, 2007, continued to return the claimant to work, diagnosed left hip pain and commented “[r]egular work.”

The claimant began seeing (Dr. P) in October 2008. In a medical note dated October 13, 2008, Dr. P noted low back pain. In a “pre-op” order Dr. P diagnosed a herniated disc and indicated consent had been obtained for a lumbar laminectomy/discectomy. An operative report dated November 25, 2008, notes surgery for L5-S1 spondylolisthesis, instability and radiculopathy on the left side of S1 and that the surgery was performed on November 25, 2008. An “excuse slip” dated November 10, 2008, states that the claimant is unable to return to work “because [of] spine surgery.” Another excuse slip dated December 10, 2008, states that the claimant will be released to work in “6 months.” A third excuse slip dated January 14, 2009, states that the claimant is released to return to work “light duty Jan 29, 2009” with restrictions of no heavy lifting and no frequent bending.

The hearing officer determined, and we have affirmed, that the compensable injury of \_\_\_\_\_, does not include lumbar radiculopathy and a disc protrusion at L5-S1. The claimant had been returned to work without restrictions until November 10, 2008, when the claimant was taken off work in preparation for L5-S1 lumbar surgery for radiculopathy on the left side of S1, conditions which were determined by the hearing officer, and affirmed by the Appeals Panel, to be not compensable. There is no medical evidence that the claimant was unable to obtain and retain employment at wages equivalent to his pre-injury wage due to his compensable injury for the date of disability at issue.

The hearing officer’s determination that the claimant had disability beginning on November 10, 2008, and continuing to the date of the CCH is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer’s determination that the claimant had disability beginning on November 10, 2008, and continuing to the date of the CCH and render a new decision that the claimant did not have disability from November 10, 2008, through the date of the CCH.

## SUMMARY

We affirm the hearing officer's decision that the compensable injury of \_\_\_\_\_, includes a disc protrusion at L4-5 but does not include lumbar radiculopathy and a disc protrusion at L5-S1.

We reverse the hearing officer's determination that the claimant had disability beginning on November 10, 2008, and continuing through the date of the CCH and render a new decision that the claimant did not have disability from November 10, 2008, through the date of the CCH.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge