

APPEAL NO. 091728
FILED JANUARY 15, 2010

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 October 13, 2009. The hearing officer determined that: (1) the compensable injury of _____, extends to a right knee medial meniscus tear; (2) respondent 1 (claimant) had disability from August 6, 2009, continuing through September 29, 2009, and at no other times through the date of the CCH; and (3) the appellant (carrier) did not waive the right to contest compensability of a right knee medial meniscus tear by not timely contesting the diagnosis in accordance with Section 409.021.

The carrier appealed the extent-of-injury issue on a sufficiency of the evidence basis. The carrier also contends that the hearing officer exceeded the scope of the extent-of-injury issue which was limited to a right knee medial meniscus tear and erred by finding that a right knee internal derangement and chondrosis arose out of or naturally flowed from the compensable injury. The carrier also appealed the hearing officer's determination that the claimant had disability from August 6 through September 29, 2009. The claimant responded, urging affirmance. The appeal file does not contain a response from respondent 2 (subclaimant).

The hearing officer's determination on the carrier waiver issue has not been appealed and has become final pursuant to Section 410.169. The hearing officer's determination that the claimant did not have disability before August 6, 2009, or after September 29, 2009, continuing through the date of the CCH has not been 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 _____. At the CCH there was considerable evidence presented regarding the mechanics of the injury which was a factual determination for the hearing officer to resolve.

EXTENT OF INJURY OF A RIGHT KNEE MEDIAL MENISCUS TEAR

The hearing officer's determination that the compensable injury extends to a right knee medial meniscus tear is supported by the evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant had sustained disability from August 6 through September 29, 2009, is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY TO RIGHT KNEE INTERNAL DERANGEMENT AND CHONDROSIS

The extent-of-injury issue reported out of the benefit review conference (BRC) was whether "the compensable injury of _____ extend[s] to include a right knee medial meniscal tear." The hearing officer announced that issue at the CCH and the parties agreed to that issue. The hearing officer in a conclusion of law, determined that the compensable injury extends to a right knee medial meniscus tear and we have affirmed that determination.

In evidence is an operative report dated August 6, 2009, which has as a pre-operative diagnosis "[r]ight knee internal derangement" and as a post-operative diagnosis "[r]ight knee internal derangement with medial meniscus tear . . ." and Grade III chondrosis. The carrier has appealed Finding of Fact No. 4, which found that "[r]ight knee internal derangement, medial meniscus tear and chondrosis arose out of or naturally flowed from the compensable injury." We have affirmed the determination that the compensable injury extends to a right knee medial meniscus tear. There was no mention of right knee internal derangement or chondrosis in argument at the CCH and those conditions were not actually litigated.

The claimant, in his response, contends that although the issues certified in the benefit review officer's report do not contain any mention of right knee internal derangement and chondrosis, the carrier was aware of those conditions as they were in the medical record and that the issue of disability requires the hearing officer to consider what the injury consisted of. We do note that the claimant's position on the extent-of-injury issue at the BRC was that (Dr. G) had diagnosed the claimant with right knee derangement. However, that condition was not added to the extent-of-injury issue certified out of the BRC nor is there any allegation that in fact right knee internal derangement should have been part of the litigated issue. The issue on extent of injury listed at the BRC was specifically related to a right knee medial meniscus tear. Regardless of whether other conditions are listed in the medical records, that does not expand the specific condition listed in, and agreed to by the parties, in the extent-of-injury issue.

Accordingly, we reverse so much of the hearing officer's Finding of Fact No. 4 that finds the right knee internal derangement and chondrosis arose out of or naturally flowed from the compensable injury as exceeding the scope of the issue before the hearing officer. We render a new decision by striking the terms "internal derangement" and "chondrosis" from Finding of Fact No. 4. Our reversal on this point is not to be read

as a holding that the claimant does not have right knee internal derangement or chondrosis but only that those conditions were not a part of the extent-of-injury issue.

SUMMARY

We affirm the hearing officer's determinations that the compensable injury extends to a right knee medial meniscus tear and that the claimant had disability from August 6 through September 29, 2009.

We reverse so much of Finding of Fact No. 4 that found right knee internal derangement and chondrosis arose out of or naturally flowed from the compensable injury by striking those conditions from Finding of Fact No. 4, because the finding exceeded the scope of the issue before the hearing officer.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063-2732.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge