

APPEAL NO. 091834
FILED JANUARY 25, 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 15, 2009. The issues before the hearing officer were:

- (1) Does the compensable injury of _____, include left shoulder sprain/strain, cervical sprain/strain, C5-6 large posterolateral disc extrusion on the left causing effacement and flattening of the cord, a small posterolateral disc protrusion on the left at C6-7 with mild encroachment on the left neural foramen and cervical radiculopathy?
- (2) Did the appellant (claimant) have disability resulting from a compensable injury, from February 5, 2009, through the date of the CCH?

The hearing officer determined that: (1) the compensable injury includes left shoulder sprain/strain, cervical sprain/strain, C5-6 large posterolateral disc extrusion on the left causing effacement and flattening of the cord, and a small posterolateral disc protrusion on the left at C6-7 with mild encroachment on the left neural foramen; and (2) the claimant had disability beginning February 5, 2009, and continuing through the date of the CCH.

The claimant appealed the hearing officer's extent-of-injury determination, contending that the hearing officer failed to make a finding of fact, conclusion of law and decision as to whether the compensable injury of _____, includes cervical radiculopathy. The respondent (carrier) responded, urging affirmance.

The hearing officer's decision on the issue of disability and that portion of the hearing officer's decision that the compensable injury extends to left shoulder sprain/strain, cervical sprain/strain, C5-6 large posterolateral disc extrusion on the left causing effacement and flattening of the cord, and a small posterolateral disc protrusion on the left at C6-7 with mild encroachment on the left neural foramen have not been appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____. Although listed in the benefit review conference report and agreed to by the parties at the CCH, the hearing officer failed to include in her decision with regard to the extent-of-injury issue whether the compensable injury of _____, extends to cervical radiculopathy. We note that the hearing officer did not make a finding of fact, conclusion of law, or a decision on this condition. We also note that the parties did not

agree to withdraw the alleged condition in dispute. Further, we note that the parties did not agree to a resolution of the alleged condition in dispute. The hearing officer's decision is incomplete as to the extent of injury condition of cervical radiculopathy.

The hearing officer failed to include in her decision whether the compensable injury of _____, extends to cervical radiculopathy. See Appeals Panel Decision (APD) 080331, decided May 1, 2008, and APD 090397, decided May 21, 2009. Accordingly, we reverse and remand this case for the hearing officer to make a determination on the issue of whether the compensable injury of _____, extends to cervical radiculopathy.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge