

APPEAL NO. 091880
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 30, 2009. The sole issue before the hearing officer, as expanded by agreement of the parties, was:

- (1) Does the _____, compensable injury extend to include injuries to the cervical and/or thoracic spines and, if so, to what extent?

The hearing officer determined that the compensable injury of _____, extends to a cervical sprain/strain with cervical radiculitis, a thoracic sprain/strain and thoracic neuritis, but does not extend to displacement of thoracic intervertebral disc without myelopathy, lumbosacral neuritis, and thoracic spine protrusions at T3-4, T5-6 and T7-8.

The appellant (claimant) appealed that portion of the hearing officer's extent-of-injury determination that the compensable injury of _____, does not extend to displacement of thoracic intervertebral disc without myelopathy, lumbosacral neuritis, and thoracic spine protrusions at T3-4, T5-6 and T7-8 on a sufficiency of the evidence basis. The claimant also contends that the hearing officer exceeded the scope of the extent-of-injury issue limited to the cervical and thoracic spine and erred by finding that the compensable injury does not extend to lumbosacral neuritis. The respondent (carrier) responded, urging affirmance. The carrier contends that the claimant agreed to expand the extent-of-injury issue (to the cervical and thoracic spine), thereby waiving "any right to complain of" the hearing officer's extent-of-injury determination.

That portion of the hearing officer's extent-of-injury determination that the compensable injury of _____, extends to a cervical sprain/strain with cervical radiculitis, a thoracic sprain/strain and thoracic neuritis 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 to at least his right shoulder on _____.

**EXTENT OF INJURY OF
THORACIC INTERVERTEBRAL DISC WITHOUT MYELOPATHY
AND THORACIC SPINE PROTRUSIONS AT T3-4, T5-6 AND T7-8**

The hearing officer's determination that the compensable injury of _____, does not extend to displacement of thoracic intervertebral disc without myelopathy and thoracic spine protrusions at T3-4, T5-6 and T7-8 is supported by the evidence and is affirmed.

EXTENT OF INJURY TO LUMBOSACRAL NEURITIS

The hearing officer amended the extent-of-injury issue to expand it to include the cervical and thoracic spine and the parties agreed to that issue. The hearing officer in a finding of fact and conclusion of law determined that the compensable injury does not extend to lumbosacral neuritis. There was no mention of lumbosacral neuritis in argument at the CCH and that condition was not actually litigated. The carrier contends that the lumbosacral neuritis was one of the claimant's diagnosed conditions and that the claimant "had the burden of proof to prove by a preponderance of the evidence, that his compensable injury extends to and includes anything beyond his right shoulder, cervical sprain/strain, thoracic sprain/strain, and thoracic neuritis." We note that the extent-of-injury issue was limited to the cervical and thoracic spine. 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. 5 that finds that the lumbosacral neuritis did not arise from or flow naturally from the compensable injury, and Conclusion of Law No. 4 that determines that the compensable injury does not include lumbosacral neuritis as exceeding the scope of the issue before the hearing officer. We render a new decision by striking the terms "lumbosacral neuritis" from Finding of Fact No. 5, Conclusion of Law No. 4 and the decision.¹ Our reversal on this point is not to be read as a holding that the claimant does or does not have lumbosacral neuritis, but only that the condition was not a part of the extent-of-injury issue.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of _____, does not extend to displacement of thoracic intervertebral disc without myelopathy and thoracic spine protrusions at T3-4, T5-6 and T7-8.

We reverse so much of the hearing officer's Finding of Fact No. 5 that finds that the lumbosacral neuritis did not arise from or flow naturally from the compensable injury, and Conclusion of Law No. 4 that determines that the compensable injury does not include lumbosacral neuritis as exceeding the scope of the issue before the hearing officer. We render a new decision by striking the terms "lumbosacral neuritis" from Finding of Fact No. 5, Conclusion of Law No. 4 and the decision, because that condition exceeded the scope of the issue before the hearing officer.

¹ We note that Finding of Fact No. 3 finds that the claimant was diagnosed with lumbosacral neuritis.

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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge