

APPEAL NO. 100146
FILED MARCH 24, 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 was held on January 12, 2010. The sole disputed issue was:

Does the compensable injury of _____, extend to include depressive reaction with anxiety (anxiety and depression), major depressive disorder, anxiety disorder, and/or mental disease?

With regard to that issue the hearing officer determined:

The compensable injury of _____, extends to include depressive reaction with anxiety but does not extend to include anxiety and depression, major depressive disorder, anxiety disorder, and/or any other mental disease apart from depressive reaction with anxiety.

The appellant (claimant) appealed, contending that a person cannot have a diagnosis of depressive reaction with anxiety without suffering from depression and anxiety. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. It is undisputed that the claimant fell from a truck and injured his low back and right knee.

In preparation for possible spinal surgery, the claimant was referred for psychological testing. In a report dated October 7, 2009, (Mr. G), a licensed professional counselor, in interpreting a test, indicated that the claimant was "experiencing severe depression at this time" and "[a] significant level of anxiety is also noted." A diagnostic impression of "[d]epressive reaction with [a]nxiety (due to compensable injury)" was assessed by Mr. G. (Dr. H), the treating doctor, in a report dated October 13, 2009, commented on Mr. G's psychological evaluation dated October 7, 2009, stating that the claimant is a poor candidate for an invasive procedure because "he expresses signs and symptoms of depressive reaction with anxiety and psychological factors adversely affecting his medical condition" In a report dated December 24, 2009, (Dr. M), a designated doctor, notes "a history of depression/anxiety"

(Dr. B), a carrier peer review doctor, in a report dictated on December 1 and 2, 2009, comments that documentation does not support that the compensable injury

extends to or includes anxiety, depression, major depressive disorder or any kind of mental disorder. The hearing officer, in his Background Information, comments that Dr. B “did not have any of the several [. . .] [c]linic records in which [c]laimant checked boxes describing himself as depressed, sad, fearful, and/or frustrated starting in April 2008 and did not have the report from [Mr. G] for his evaluation of [c]laimant.”

That portion of the hearing officer’s determination that the compensable injury of _____, extends to include “depressive reaction with anxiety,” but does not extend to include “major depressive disorder [and] anxiety disorder” is supported by sufficient evidence and is affirmed.

That portion of the hearing officer’s determination that the compensable injury of _____, does not extend to include “anxiety and depression” and/or any other mental disease apart from depressive reaction with anxiety, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Mr. G’s psychological evaluation dated October 7, 2009, notes that the claimant was experiencing severe depression and noted a significant level of anxiety.

We read the issue reported from the benefit review conference as equating, “depressive reaction with anxiety (anxiety and depression),” as one condition, noting that anxiety and depression is in parenthesis and is followed by a comma, and the other conditions each of which are separated by commas.

We hold that the issue as framed “depressive reaction with anxiety (anxiety and depression)” to be one condition. We have affirmed the hearing officer’s determination that the compensable injury includes depressive reaction with anxiety and so we reverse that portion of the hearing officer’s determination that the compensable injury does not extend to include anxiety and depression and/or any other mental disease apart from depressive reaction with anxiety. We render a new decision that the compensable injury of _____, extends to include anxiety and depression but does not extend to include any other mental disease apart from depressive reaction with anxiety (anxiety and depression) to clarify that anxiety and depression are part of the compensable injury.

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
225 EAST JOHN CARPENTER FREEWAY, SUITE 1300
IRVING, TEXAS 75062-2281.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge