

APPEAL NO. 100546  
FILED JULY 1, 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 March 31, 2010. The issues for Docket No. (Docket No. 1) (referred to as the 1st 2008 injury) were:

1. Does the compensable injury of \_\_\_\_\_, include lumbar strain/sprain, lumbar spine disc displacement, lumbar internal disc disruption, lumbar radiculitis/radiculopathy, spondylosis and grade II spondylothesis at L4-5, grade I spondylolisthesis at L5-S1, coccyx subluxation, thoracic strain/sprain, cervical radiculitis/radiculopathy, cervical strain/sprain, right shoulder strain/sprain, right shoulder impingement syndrome, right rotator cuff tear, right full thickness tear of the distal supraspinatus, right elbow tenosynovitis and tendonitis, right wrist strain/sprain, right wrist tenosynovitis and tendonitis, right median nerve injury, right wrist triangular FCC tear, right wrist ganglion cyst and right hand strain/sprain? [referred to as the (month) 2008 claimed conditions]
2. Did the [appellant (claimant)] have disability resulting from an injury sustained on \_\_\_\_\_, from June 5, 2008, through October 6, 2008?
3. What is the average weekly wage [(AWW)]?

The issues for Docket No. (Docket No. 2) (referred to as the 2nd 2008 injury) were:

1. Did the [c]laimant have disability resulting from an injury sustained on (subsequent date of injury), from June 5, 2008, through September 24, 2008?
2. What is the [AWW]?

The parties stipulated that the AWW for the \_\_\_\_\_, injury is \$354.54 and for the (subsequent date of injury) is \$388.37.

The hearing officer determined that the \_\_\_\_\_, compensable injury includes the (month) 2008 claimed conditions and that the claimant "sustained disability from June 19, 2008, through October 6, 2008, and at no other times." Regarding the (subsequent date of injury), the hearing officer determined that the claimant sustained disability from June 5, 2008, through September 24, 2008.

The hearing officer's determinations that the \_\_\_\_\_, compensable injury includes the (month) 2008 claimed conditions and that for the (subsequent date of injury) the claimant had disability from June 5, 2008, through September 24, 2008, have not been appealed and have therefore become final pursuant to Section 410.169.

The claimant appealed the hearing officer's determination that for the 1st 2008 injury the claimant sustained disability from June 19, 2008, through October 6, 2008, "and at no other times." The claimant alleges that additional medical care and surgery was received for the 1st 2008 injury in 2009 and appeals the phrase "and at no other times" for the 1st 2008 injury. The respondent (carrier) responds, urging affirmance of the hearing officer's decision as written.

## DECISION

Affirmed in part and reversed and rendered in part.

All the issues in the two docket numbers have been resolved, either by stipulation or have become final, except the disability issue for the 1st 2008 injury. The disability issue certified for the 1st 2008 injury was "[d]id the [c]laimant have disability resulting from an injury sustained on \_\_\_\_\_, from June 5, 2008, through October 6, 2008?" The hearing officer determined that the claimant sustained disability from June 19, 2008, through October 6, 2008, "and at no other times."

That portion of the hearing officer's determination that disability began for the 1st 2008 injury on June 19, 2008, through October 6, 2008, is supported by sufficient evidence and is affirmed. No additional periods of disability were litigated. The hearing officer's language "and at no other times" exceeded the scope of the issue certified from the benefit review conference and agreed to by the parties. The hearing officer was limited to determining disability for a specific period of time (i.e. from June 5, 2008, through October 6, 2008). By adding the language "and at no other times" the hearing officer exceeded the scope of the issue. Accordingly, we reverse the hearing officer's decision on the (month) 2008 disability issue by striking the words "and at no other times" in Finding of Fact No. 4, Conclusion of Law No. 4 and the Decision as surplusage that exceeded the scope of the issue before the hearing officer. We render a new decision that for the 1st 2008 injury the claimant sustained disability from June 19, 2008, through October 6, 2008.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3232.**

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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