

APPEAL NO. 101811
FILED FEBRUARY 11, 2011

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 October 29, 2010. With regard to the sole disputed issue, the hearing officer determined that the compensable injury of _____, includes a L5-S1 disc herniation, left radiculitis, spondylolisthesis, external operative wound, and a post-operative infection but did not include pulmonary post-traumatic insufficiency.

The appellant (carrier) appealed the hearing officer's determination on the conditions that the hearing officer found compensable on a sufficiency of the evidence basis. The appeal file does not contain a response from either respondent 1 (claimant) or respondent 2 (subclaimant). The hearing officer's determination that the compensable injury did not include pulmonary post-traumatic insufficiency 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 on _____. The claimant testified, and the medical records support, that the claimant, an armored truck driver, injured his low back when he tried to catch a falling heavy crate. The medical records reflect that the claimant received conservative treatment and that an MRI performed on April 30, 2008, showed bilateral L5 pars interarticular defects with Grade I spondylolisthesis at L5-S1. It is undisputed that the claimant had lumbar fusion surgery on July 30, 2008.

**L5-S1 DISC HERNIATION, LEFT RADICULITIS,
SPONDYLOLISTHESIS, AND EXTERNAL OPERATIVE WOUND**

The hearing officer's determination that the compensable injury includes a L5-S1 disc herniation, left radiculitis, spondylolisthesis, and external operative wound (the lumbar fusion surgery) is supported by sufficient evidence and is affirmed.

POST-OPERATIVE INFECTION

In its appeal, the carrier contends that the medical records make no reference to a post-operative infection as a result of the compensable injury. We agree. The claimant testified, in response to a question from his attorney, that he had fusion surgery on July 30, 2008, and then "had an infection in my back and so they had to go back in and clean it all out." There is no medical evidence of either an infection or any medical procedure to "clean it all out." The surgeon, in the operative report dated July 30, 2008, noted "[n]o complications encountered." The treating doctor, in a form office

note dated January 21, 2009, notes “problems holding urine” and continued care for complication. In a letter report dated January 26, 2009, the treating doctor notes the claimant’s surgery and that the claimant “had subsequent complications and continues to need specialty care.” There is no reference to any kind of infection. A designated doctor, appointed for extent of injury, in a report dated August 11, 2010, notes that no operative reports of the spinal fusion surgery have been submitted for his review. The designated doctor on the extent of the injury question opined the compensable injury includes lumbar disc herniation at L5-S1 with spinal fusion and radiculitis left lower extremity. No mention is made of any infection or any procedure to “clean out” an infection.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer’s determination that the compensable injury of _____, includes a post-operative infection is not supported by the evidence. Accordingly, we reverse the hearing officer’s determination that the compensable injury of _____, includes a post-operative infection as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We render a new decision that the compensable injury of _____, does not include a post-operative infection.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury of _____, includes a L5-S1 disc herniation, left radiculitis, spondylolisthesis, and external operative wound.

We reverse the hearing officer’s determination that the compensable injury of _____, includes a post-operative infection and render a new decision that the compensable injury of _____, does not include a post-operative infection.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Carisa Space-Beam
Appeals Judge