

APPEAL NO. 110568
FILED JULY 14, 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 (CCH) was held on March 17, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury extends to disc protrusions/herniations at L2-3, L3-4, L4-5, and L5-S1; (2) the respondent/cross-appellant (claimant) had disability resulting from an injury sustained on _____, only from July 23 through November 8, 2010;¹ and (3) the date of maximum medical improvement (MMI) is November 9, 2010.

The appellant/cross-respondent (self-insured) appealed, disputing the hearing officer's determinations of MMI, disability, and the extent of the claimant's injury. The claimant responded, urging affirmance of the hearing officer's determinations of MMI and extent of injury. In the same document the claimant cross-appealed, contending that the ending date of disability should be November 9, 2010, rather than November 8, 2010. The appeal file does not contain a response from the self-insured to the claimant's cross-appeal of the ending date of disability.

The claimant is deemed to have received the hearing officer's decision on April 4, 2011. Pursuant to Section 410.202(a) a request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. The 15th day after April 4, 2011, excluding Saturdays and Sundays and holidays listed in Government Code § 662.003, is April 27, 2011. The transmittal of the claimant's pleading is dated May 10, 2011, and was sent by facsimile transmission on May 10, 2011, and received by the Texas Department of Insurance, Division of Workers' Compensation (Division) on that same date. The claimant's pleading is timely as a response to the self-insured's appeal but is untimely as a cross-appeal because it was not mailed or filed on or before April 27, 2011.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) the claimant sustained a compensable injury on _____;² (2) the Division appointed Dr. K as a designated doctor to determine MMI, impairment rating (IR), ability to return to work, and the extent of the compensable

¹ We note that the date of the compensable injury stated in the disability issue in the decision and order is incorrectly noted as (incorrect date of injury), rather than the correct date of _____. The disability issue in dispute at the CCH was for a defined period of July 23 through November 9, 2010.

² Although mistakenly left out of the stipulations in the hearing officer's decision and order, a review of the record reflects that the parties stipulated that the claimant sustained a compensable injury on _____.

injury; (3) Dr. K³ certified the claimant reached MMI on July 22, 2010, with a seven percent IR; (4) Dr. B, the claimant's treating surgeon, certified the claimant reached MMI on November 9, 2010, with a seven percent IR; and (5) the claimant's IR is seven percent. The claimant testified that she sustained injuries to her low back and left knee as a result of an altercation with an inmate on _____.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury extends to disc protrusions/herniations at L2-3, L3-4, L4-5, and L5-S1 is supported by sufficient evidence and is affirmed. We note the parties stipulated that the claimant's IR is seven percent and that both Dr. K and Dr. B included lumbar herniations in the diagnoses they considered in rating the compensable injury.

MMI

The hearing officer's determination that the date of MMI is November 9, 2010, is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue in dispute at the CCH was for a defined period of time: July 23 through November 9, 2010. The hearing officer exceeded the scope of the disability issue when she determined that the claimant had disability only from July 23 through November 8, 2010.

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 claimant testified that she returned to work on August 5, 2010, and worked through August 19, 2010. In both the opening and closing argument of the CCH, the claimant's ombudsman acknowledged that she worked during this time period and did not request disability for the period she worked. In a letter from the human resources department of the employer dated August 20, 2010, the employer acknowledged that the claimant returned to work on August 5, 2010. There is sufficient evidence to support the remaining period of disability determined by the hearing officer.

The hearing officer's determination that the claimant had disability resulting from an injury sustained on _____, only from July 23 through November 8, 2010, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the claimant

³ We note the hearing officer mistakenly referred to Dr. Keller rather than Dr. K in the stipulations recorded in the decision and order.

had disability resulting from an injury sustained on _____, only from July 23 through November 8, 2010, and render a new decision that the claimant had disability resulting from an injury sustained on _____, from July 23 through August 4, 2010, and from August 20 through November 8, 2010.

SUMMARY

We affirm the hearing officer's decision that the compensable injury extends to disc protrusions/herniations at L2-3, L3-4, L4-5, and L5-S1.

We affirm the hearing officer's decision that the date of MMI is November 9, 2010.

We reverse the hearing officer's decision that the claimant had disability resulting from an injury sustained on _____, only from July 23 through November 8, 2010, and render a new decision that the claimant had disability resulting from an injury sustained on _____, from July 23 through August 4, 2010, and from August 20 through November 8, 2010.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**COUNTY JUDGE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge