

APPEAL NO. 111952
FILED MARCH 5, 2012

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 November 9, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the disputed issues before him, the hearing officer determined that the compensable injury of [date of injury], includes an injury to the cervical spine of C3-4 disc bulge, C4-5 disc protrusion with canal stenosis, C5-6 disc bulge with canal stenosis, and C6-7 disc protrusion. The hearing officer also determined that the compensable injury of [date of injury], does not include uncovertebral osteophytes or cervical radiculitis. The hearing officer's determination that the compensable injury of [date of injury], does not include uncovertebral osteophytes or cervical radiculitis was not appealed and has become final pursuant to Section 410.169.

The hearing officer also determined that the respondent (claimant) had disability from December 6, 2010, through January 30, 2011, and for no other periods.

The appellant (carrier) appealed the extent-of-injury determinations that were adverse to it and the disability determination. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury in the form of a head contusion. The claimant testified that he is a truck driver and that on [date of injury], he was struck on the top of his head by a cross beam (or "skytrack") from a large industrial fork lift. The claimant was wearing a hard hat at the time. The claimant testified that he continued working and did not start "hurting" until a couple of days later. The claimant said he began experiencing headaches and neck stiffness mildly at first, but progressively worsening and that he sought medical attention at a hospital emergency room (ER) on October 22, 2010. The ER records indicate a diagnosis of radiculopathy, cervical sprain and back sprain. The carrier has accepted an "injury in the form of head [contusion] only." The medical records indicate that the claimant began treating on November 3, 2010, with [Dr. N] for the compensable injury.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], includes an injury to the cervical spine of C3-4 disc bulge, C4-5 disc protrusion with canal stenosis, C5-6 disc bulge with canal stenosis, and C6-7 disc protrusion is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue was revised at the CCH, upon agreement of the parties, to state:

Did the claimant have disability from [December 3, 2010], through [May 24, 2011], resulting from the injury sustained on [date of injury]?

Disability is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain unemployment at wages equivalent to the pre-injury wage.

The hearing officer in the Background Information regarding disability comments: "There was minimal testimony or evidence in regard to the claimant's alleged disability." The hearing officer references a December 3, 2010, letter from Dr. N in which Dr. N "indicated [an] intent to return the claimant to restricted duty work on December 6, 2010," in arriving at his determination of a December 6, 2010, beginning date of disability. In evidence is an office note dated December 3, 2010, by Dr. N, which states: "[the claimant] is desperate to get back to work so I [Dr. N] will draw up some restrictions for light duty for Monday." From that comment it is clear that the claimant was not working on December 3, 2010. In a separate Return to Work letter dated December 3, 2010, Dr. N states:

I am going to release [the claimant] to return to light duty work on December 6, 2010. [The claimant] may do light office work only.

Dr. N's comments reflect that on December 3, 2010, the claimant had an inability, because of the compensable injury, to obtain and retain employment at wages equivalent to the pre-injury wage and there is no evidence to the contrary.

The hearing officer also commented, in the Background Information, "[i]t can only be presumed, based on the dearth of evidence on the issue, that the carrier was paying temporary income benefits [TIBs] up until that time [December 6, 2010]." Whether the carrier was, or was not, paying TIBs from December 3 through December 6, 2010, is immaterial to whether the claimant had disability (i.e. the inability, because of the

compensable injury, to obtain and retain employment at wages equivalent to the pre-injury wage). The hearing officer's determination that disability ended on January 30, 2011, is supported by sufficient evidence and is affirmed.

We affirm the hearing officer's determination that the compensable injury of [date of injury], includes an injury to the cervical spine of C3-4 disc bulge, C4-5 disc protrusion with canal stenosis, C5-6 disc bulge with canal stenosis and C6-7 disc protrusion.

We affirm that portion of the hearing officer's disability determination that the claimant's disability continued until January 30, 2011, and for no other period through the date of the CCH, November 9, 2011.

We reverse the hearing officer's determination that the claimant did have disability beginning December 6, 2010, and render a new decision that the claimant had disability beginning December 3, 2010.

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 78701-3218.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge