

APPEAL NO. 121200
FILED AUGUST 22, 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 April 3, 2012, with the record closing on May 18, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [date of injury], compensable injury extends to the 15 mm loose body in the posterior joint space of the left knee; (2) the [date of injury], compensable injury does not extend to the left knee tricompartmental degenerative changes involving the medial compartment and chronic diffuse complex tearing/maceration of the medial meniscus; (3) the appellant/cross-respondent (claimant) has disability resulting from an injury sustained on [date of injury], from May 7, 2011, through the date of the CCH; (4) the claimant has not reached maximum medical improvement (MMI); and (5) since the claimant has not reached MMI, he cannot be certified with an impairment rating (IR).

The claimant appealed, disputing that portion of the hearing officer's extent-of-injury determination that the compensable injury does not extend to the left knee tricompartmental degenerative changes involving the medial compartment and chronic diffuse complex tearing/maceration of the medial meniscus. The claimant contends that the hearing officer misread the designated doctor's response to a letter of clarification (LOC). The respondent/cross-appellant (carrier) responded, urging affirmance of that portion of the hearing officer's extent-of-injury determination.

The carrier cross-appealed, disputing the hearing officer's determinations that: (1) the claimant was not at MMI; (2) since the claimant has not reached MMI, he cannot be certified with an IR; (3) the claimant had disability for the claimed period; and (4) the compensable injury extends to the 15 mm loose body in the posterior joint space of the left knee. Additionally, the carrier contends that the hearing officer improperly sent an LOC to the designated doctor. The claimant responded, contending that it was appropriate for the hearing officer to send an LOC and urging affirmance of the hearing officer's determinations disputed by the carrier.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that [Dr. S] was appointed by the Texas Department of Insurance, Division of Workers' Compensation to address extent of injury, MMI and IR. In evidence, is a Notice of Disputed Issues(s) and Refusal to Pay Benefits (PLN-11) dated

November 21, 2011, which states that the carrier accepted a left shoulder rotator cuff tear and a left knee sprain/strain.

DISABILITY

The hearing officer's determination that the claimant has disability resulting from an injury sustained on [date of injury], from May 7, 2011, through the date of the CCH is supported by sufficient evidence and is affirmed.

MMI/IR

The hearing officer's determinations that the claimant has not reached MMI and since the claimant has not reached MMI he cannot be certified with an IR are supported by sufficient evidence and are affirmed.

LOCS AND EXTENT OF INJURY

As previously noted, the parties stipulated that Dr. S was appointed as the designated doctor to give an opinion regarding the extent of the claimant's compensable injury. Section 408.0041(a)(3) provides that at the request of the insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the extent of the employee's compensable injury. Section 408.0041(e) provides in part that the report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. See *also* 28 TEX. ADMIN. CODE §§ 127.1(a)(3) and 127.10(g) (Rules 127.1(a)(3) and 127.10(g)).

On March 18, 2011, the claimant had a left knee MRI which gave as an impression: tricompartmental degenerative changes most severe involving the medial compartment; findings consistent with chronic diffuse complex tearing/maceration of the medial meniscus; and 15 mm loose body in the posterior joint space.

Dr. S examined the claimant on January 24, 2012, noting that on the date of injury the claimant was unloading a truck with a two-wheeler dolly, when he fell and sustained a hyperflexion injury to the left knee in a fall on the outstretched left arm and shoulder. Dr. S noted that the claimant had two prior surgical repairs of his left knee when he was 21 years old. At the time of the designated doctor's examination the claimant was 62 years old. Dr. S opined that the extent of the claimant's compensable injury was impingement syndrome of the right shoulder, meniscal tear of the left knee, and loose body of the left knee.

The hearing officer in an LOC dated April 13, 2012, asked the designated doctor to explain his opinion in greater detail and clarify that he meant the claimant's shoulder injury was to his left shoulder and not his right shoulder. Dr. S responded in a letter dated April 17, 2012, stating that the reference to the right shoulder rather than the left shoulder was a typographical error. Dr. S then stated that "[i]n view of the preexisting injuries and prior surgical procedure to the left knee it is my opinion that the left knee tricompartmental degenerative changes were preexisting. Also the loose body in my opinion in all probability was preexisting also."

The hearing officer noted in an e-mail to the parties that Dr. S did not answer the initial LOC as he addressed only two of the three diagnoses and gave a response inconsistent with his prior narrative regarding the loose body fragment. The hearing officer sent a second LOC to Dr. S dated April 24, 2012. The hearing officer's LOC pointed out that the prior response from Dr. S did not address each of the disputed diagnoses and noted the inconsistency between his initial opinion in the narrative and his first response to the LOC.

Dr. S responded in a letter dated April 25, 2012. In his response Dr. S opined that the compensable injury extended to the meniscal tear and the loose body of the left knee. Dr. S noted that during his initial evaluation, he did not have prior x-rays to compare.

In evidence is a letter dated April 26, 2012, in which the carrier renewed its objection to any request for clarification being sent to Dr. S and further objected to any further request for clarification to be sent. Under the facts presented in this case, we perceive no error in the LOCs sent by the hearing officer to Dr. S. See Section 410.163 and Rule 127.20.

The hearing officer discussed the opinion of Dr. S in the Background Information portion of his decision and stated that the opinion of Dr. S is supported by a preponderance of the evidence. The hearing officer's determination that the compensable injury extends to a 15 mm loose body in the posterior joint space of the left knee but does not extend to tricompartmental degenerative changes involving the medial compartment is supported by sufficient evidence and is affirmed.

The hearing officer states in the Background Information that Dr. S clarified that the chronic diffuse complex tearing/maceration of the medial meniscus was a degenerative change that was not due to the mechanism of injury. However, the LOC response from Dr. S states: "[i]t is my opinion that the meniscal tear of the left knee was [a] new injury directly causally related to the injury . . . the [claimant] sustained on [date of injury], while at work. This is new objective damage or harm to the physical structure of the body. This is well demonstrated by the MRI scan of the knee."

The hearing officer was persuaded that the opinion of Dr. S was supported by a preponderance of the evidence. We agree. However, the hearing officer misread Dr. S's response dated April 25, 2012, to indicate that the compensable injury does not include chronic diffuse complex tearing/maceration of the medial meniscus of the left knee. However, it is clear that Dr. S opined that the claimant's compensable injury includes chronic diffuse complex tearing/maceration of the medial meniscus because he specifically states that "the mechanism of injury did cause damage or harm to the physical structure of the body as demonstrated on the MRI of the affected knee with a meniscal tear."

The claimant's treating doctor in a medical report dated April 1, 2011, noted that the claimant was injured due to a mechanism involving the hyperextension and torsion of his left knee, stating that the claimant had an MRI positive for torn medial meniscus and loose body in the posterior joint space of the left knee. A peer review performed on April 15, 2011, by [Dr. H] concluded that the findings of the left knee MRI including the complex tearing/maceration of the medial meniscus and 15 mm loose body in the posterior joint space were degenerative in nature but were aggravated by the compensable injury.

The medical evidence indicates that the claimant's compensable injury includes chronic diffuse complex tearing/maceration of the medial meniscus of the left knee. The hearing officer's determination that the compensable injury does not include diffuse complex tearing/maceration of the medial meniscus of the left knee is against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer's determination that the claimant's compensable injury of [date of injury], does not include diffuse complex tearing/maceration of the medial meniscus of the left knee and we render a new decision that the claimant's compensable injury of [date of injury], includes chronic diffuse complex tearing/maceration of the medial meniscus of the left knee.

SUMMARY

We affirm the hearing officer's determination that the claimant has disability resulting from an injury sustained on [date of injury], from May 7, 2011, through the date of the CCH.

We affirm the hearing officer's determinations that the claimant has not reached MMI and since the claimant has not reached MMI he cannot be certified with an IR.

We affirm the hearing officer's determination that the compensable injury extends to a 15 mm loose body in the posterior joint space of the left knee but does not extend to tricompartmental degenerative changes involving the medial compartment.

We reverse the hearing officer's determination that the claimant's compensable injury of [date of injury], does not include diffuse complex tearing/maceration of the medial meniscus and we render a new decision that the claimant's compensable injury of [date of injury], includes chronic diffuse complex tearing/maceration of the medial meniscus.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge