

APPEAL NO. 121658
FILED NOVEMBER 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 July 20, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that: the compensable injury of [date of injury], extends to a cervical sprain/strain; a disc protrusion at C5-6 with mild radiculopathy; a lumbar sprain/strain; a tear at L4-5 with mild bilateral radiculopathy at L5; and a left shoulder strain; but does not include disc protrusions at C3-4, C4-5, and C6-7; a disc protrusion at L4-5; or bilateral inguinal hernias.

The appellant/cross-respondent (carrier) appealed, disputing that portion of the hearing officer's extent-of-injury determination that: the compensable injury of [date of injury], extends to a cervical sprain/strain; a disc protrusion at C5-6 with mild radiculopathy; a lumbar sprain/strain; a tear at L4-5 with mild bilateral radiculopathy at L5; and a left shoulder strain. The appeal file does not contain a response from the respondent/cross-appellant (claimant) to the carrier's appeal.

The claimant cross-appealed the hearing officer's determination that the compensable injury of [date of injury], does not extend to disc protrusions at C3-4, C4-5, and C6-7; a disc protrusion at L4-5; or bilateral inguinal hernias. The claimant also requests a clerical correction requesting that the word "mild" be excluded before radiculopathy to conform with the disputed issue. The carrier responded, urging affirmance of that portion of the extent-of-injury determination appealed by the claimant.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. A review of the record reflects the parties additionally stipulated that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. C] as the designated doctor to address extent of injury, although the hearing officer did not include that stipulation in the decision and order.

The issue reported out of the benefit review conference was: "[d]oes the compensable injury of [date of injury], extend to and include disc protrusions at C3-4, C4-5, C5-6, and C7-T1; C5-6 radiculopathy; disc protrusion and radial tear at L4-5; bilateral radiculopathy at L5; and bilateral inguinal hernias?" No request was made at the CCH to modify the issue in any way.

That portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to disc protrusions at C3-4, C4-5; a disc protrusion at L4-5; or bilateral inguinal hernias is supported by sufficient evidence and is affirmed.

That portion of the hearing officer's decision that the compensable injury of [date of injury], extends to a disc protrusion at C5-6 with radiculopathy is supported by sufficient evidence and is affirmed.

The claimant notes in his appeal that the hearing officer mistakenly included the word "mild" prior to radiculopathy in his determinations regarding both the C5-6 and L5 levels. We reverse the hearing officer's decision that the compensable injury of [date of injury], extends to a disc protrusion at C5-6 with mild radiculopathy by striking the word "mild" to conform with the disputed issue. We reverse the hearing officer's decision that the compensable injury of [date of injury], extends to L4-5 mild bilateral radiculopathy by striking the word "mild" to conform with the disputed issue.

The hearing officer determined that the compensable injury extended to a cervical sprain/strain; a lumbar sprain/strain; and a left shoulder strain. The disputed issue did not include any of these conditions. Accordingly, we reverse the hearing officer's decision by striking lumbar sprain/strain; cervical sprain/strain; and a left shoulder strain because those conditions were not at issue. However, we note that the carrier states in its appeal that it had previously accepted those conditions as part of the compensable injury.

The tear at the L4-5 level of the claimant's lumbar spine was described in the disputed issue as a radial tear. The lumbar MRI in evidence describes a full thickness radial tear in the posterior fibers of the L4-5 disc. We reform the hearing officer's decision to read that the compensable injury of [date of injury], extends to a radial tear at L4-5 to conform to the evidence and the disputed issue.

Finally, we note that the hearing officer determined that the compensable injury of [date of injury], did not extend to a disc protrusion at C6-7, a condition which was not included in the disputed issue. At issue was a disc protrusion at the C7-T1 level. The hearing officer failed to make a determination on whether or not the compensable injury extends to a disc protrusion at the C7-T1 level. Accordingly, we reverse the hearing officer's determination that the compensable injury does not extend to disc protrusion at C6-7 by striking that determination and remand the issue of whether the compensable injury of [date of injury], extends to a disc protrusion at the C7-T1 level for the hearing officer to make a determination.

In light of the foregoing, the hearing officer's decision is affirmed in part and reversed and rendered in part that: the compensable injury of [date of injury], extends to a disc protrusion at C5-6 with radiculopathy; and a radial tear at L4-5 with bilateral radiculopathy at L5; but the compensable injury of [date of injury], does not extend to disc protrusions at C3-4, C4-5; a disc protrusion at L4-5; or bilateral inguinal hernias.

We remand the issue of whether the compensable injury of [date of injury], extends to a disc protrusion at the C7-T1 level for the hearing officer to make a determination.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **SERVICE LLOYD'S INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge