

APPEAL NO. 122539  
JANUARY 24, 2013

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 October 30, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury],<sup>1</sup> does not extend to lumbar disc protrusions at L4-5 and L5-S1 and lumbar radiculitis; (2) on January 17, 2012, a bona fide offer of employment (BFOE) was made to the appellant (claimant) and accepted by the claimant which would thereby allow the respondent (carrier) to adjust the claimant's post-injury earnings (PIE) in an amount equal to that amount made in the offer for the period of January 17 through January 27, 2012; (3) the claimant had disability from December 29, 2011, through January 27, 2012; and (4) the claimant did not have disability from January 28, 2012, through the date of the CCH.

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury; the ending date of disability; and that the carrier made a BFOE. The carrier responded, urging affirmance of the disputed determinations.

**DECISION**

Affirmed as reformed in part and reversed and rendered in part.

The parties stipulated in part that the claimant sustained a compensable injury on [date of injury]. The claimant testified that she worked for employer as a leasing agent and was injured while lifting a box for a resident.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of [[date of injury]], does not extend to lumbar disc protrusions at L4-5 and L5-S1 and lumbar radiculitis is supported by sufficient evidence. However, the hearing officer mistakenly referred to the date of the compensable injury in both Conclusion of Law No. 3 and the Decision as being January 27, 2012, rather than the correct date of injury of [date of injury]. We reform Conclusion of Law No. 3 and the Decision to refer to the date of the compensable injury as [date of injury], rather than January 27, 2012. The hearing officer's determination that the compensable injury of [date of injury], does not extend to

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<sup>1</sup> We note that the issue referenced the date of the compensable injury as [date of injury], but the hearing officer mistakenly referred to the date of injury as January 27, 2012, in Conclusion of Law No. 3 and in his Decision.

lumbar disc protrusions at L4-5 and L5-S1 and lumbar radiculitis is affirmed as reformed.

### **BFOE**

That portion of the hearing officer's determination that on January 17, 2012, a BFOE was made to the claimant and accepted by the claimant which would thereby allow the carrier to adjust the claimant's PIE is supported by sufficient evidence. However, the hearing officer additionally found the dates the PIE should be adjusted based on the ending date of disability he determined. For reasons discussed below, the hearing officer's ending date of disability is reversed. Accordingly, we strike that portion of the hearing officer's determination of the dates the carrier can adjust the claimant's PIE as not being supported by the evidence. The hearing officer's determination that the carrier made a BFOE to the claimant on January 17, 2012, which the claimant accepted is affirmed as reformed.

### **DISABILITY**

The disability issue reported out of the benefit review conference was as follows: "[d]id the claimant have disability from [December 29, 2011], through the present as a result of the compensable injury sustained on [[date of injury]]?" During the opening argument of the claimant, the claimant's attorney noted that included in the claimant's exhibits was a Benefit Dispute Agreement (DWC-24) signed on May 22, 2012, which stated that the parties agree that the claimant had disability from December 29, 2011, through the present (May 22, 2012). The hearing officer then asked the parties if they wanted to amend the disability issue to reflect the dates of the DWC-24. Both parties agreed to amend the issue so that the only period in dispute before the hearing officer was May 23, 2012, through the date of the CCH.

The claimant appealed the dates the hearing officer found she did not have disability, arguing in part that the hearing officer addressed a period of disability that the parties previously agreed upon in the DWC-24. The carrier acknowledges in its response that the parties agreed at the CCH to amend the issue to address disability from May 23, 2012, through the date of the CCH.

The hearing officer failed to modify the disability issue as agreed to by the parties. Accordingly, we reform the hearing officer's decision to reflect that the only period of disability at issue before the hearing officer was May 23, 2012, through the date of the CCH. We strike the hearing officer's determination that the claimant had disability from December 29, 2011, through January 27, 2012, as exceeding the scope of the agreed disability issue before him. We reverse that portion of the hearing officer's determination that the claimant did not have disability from January 28 through May 22,

2012, as exceeding the scope of the agreed issue before him. That portion of the hearing officer's determination that the claimant did not have disability from May 23, 2012, through the date of the CCH is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to lumbar disc protrusions at L4-5 and L5-S1 and lumbar radiculitis as reformed.

We affirm the hearing officer's determination that on January 17, 2012, a BFOE was made to the claimant and accepted by the claimant which would thereby allowed the carrier to adjust the claimant's PIE as reformed.

We reverse a portion of the hearing officer's disability determination by striking that the claimant had disability from December 29, 2011, through January 27, 2012, and that the claimant did not have disability from January 28 through May 22, 2012, as exceeding the scope of the issue before him. We affirm that portion of the hearing officer's determination that the claimant did not have disability from May 23, 2012, through the date of the CCH.

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

**JAMES H. MOODY III  
2001 BRYAN STREET, SUITE 1800  
DALLAS, TEXAS 75201-3070.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge