

APPEAL NO. 130073
FILED FEBRUARY 22, 2013

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case returns following our remand in Appeals Panel Decision (APD) 121650, decided October 24, 2012, to reconstruct the record. A contested case hearing (CCH) on remand was held on November 19, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. In the original CCH held on June 27, 2012, the disputed issues before the hearing officer were:

- (1) Did the respondent [claimant] sustain a compensable injury on [date of injury]?
- (2) Did the claimant have disability from August 30 through November 25, 2011, as a result of an injury sustained on [date of injury]?
- (3) Has the appellant (carrier) waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022?
- (4) Did the claimant elect to pursue a remedy and recover compensation under the workers' compensation laws of another jurisdiction ([State1]), thereby barring recovery under the 1989 Act?

And, at the request of the carrier and added for good cause:

Is the claimant, who was injured in [State2], entitled to all rights and remedies under the 1989 Act?

The hearing officer's determination in the prior CCH that the claimant did not elect to pursue a remedy and recover compensation under the workers' compensation laws of another jurisdiction ([State1]), thereby barring recovery under the 1989 Act was not appealed and has become final pursuant to Section 410.169.

In the CCH on remand held November 19, 2012, the hearing officer determined that: (1) the Texas Department of Insurance, Division of Workers' Compensation (Division), has jurisdiction to hear this case; (2) venue is proper in the [City] field office; (3) the claimant sustained a compensable injury on [date of injury]; (4) the carrier has waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021; and (5) the claimant, who was injured in [State2], is entitled to all rights and remedies under the 1989 Act.

The carrier appealed the hearing officer's determinations that the Division has jurisdiction to hear this case; the claimant sustained a compensable injury on [date of

injury]; the carrier has waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022; and that the claimant had disability from August 30 through November 21, 2011. The claimant responded, urging affirmance of those disputed issues. The hearing officer's determination that venue is proper in the [City] field office was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

COMPENSABLE INJURY, CARRIER WAIVER, AND CLAIMANT'S ENTITLEMENT UNDER THE 1989 ACT

The hearing officer's determinations that the claimant sustained a compensable injury on [date of injury]; the carrier has waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021; and the claimant, who was injured in [State2], is entitled to all rights and remedies under the 1989 Act are supported by sufficient evidence and therefore, affirmed.

DISABILITY

One of the issues at the June 27, 2012, CCH was whether the claimant had disability from August 30 through November 25, 2011, as a result of an injury sustained on [date of injury]. Following that hearing, the hearing officer determined that the claimant had disability from August 30 through November 21, 2011, but did not have disability from November 22 through November 25, 2011. Both the carrier and the claimant appealed the disability determinations adverse to them. In the CCH on remand held November 19, 2012, the hearing officer did not address the disability issue. Normally, we would reverse the hearing officer's decision as being incomplete and remand the case for the hearing officer to consider and make findings on those issues. See APD 062446, decided January 18, 2007. However, since the Appeals Panel has previously remanded this case, pursuant to Section 410.203(c), the Appeals Panel is precluded from remanding a case more than once. Therefore, we reverse the hearing officer's decision as incomplete and we render a new decision on the issue of disability, as discussed below.

The claimant, a truck driver for the employer, testified he was injured on [date of injury], when he fell backwards and bumped his head on the ground while attempting to open the back door on his trailer. The claimant testified that after this incident he

experienced neck pain and numbness, and called his daughter to schedule an appointment with a neurologist.

The claimant first obtained medical treatment on August 30, 2011, from [Dr. K]. In a health history questionnaire dated August 30, 2011, the claimant indicated he had numbness in his hand and finger, as well as neck pain, numbness, and tingling. We note that although the claimant indicated in the questionnaire that his symptoms began in July 2011, the claimant testified that he mistakenly indicated this date and his symptoms began in late August 2011, after his injury. The claimant underwent an MRI on September 7, 2011, which revealed multilevel degenerative disc and facet disease with spinal canal and neural foraminal stenosis; a 5 mm left foraminal disc herniation at C6-7 was “the most prominent feature, associated with left neuroforaminal stenosis.” Dr. K diagnosed the claimant with cervical radiculopathy. The claimant testified that Dr. K took him off work during his initial examination on August 30, 2011, and released him to work on November 22, 2011, and he returned to his normal position with the employer after the Thanksgiving holiday. The claimant also testified that while he was off work between August 30 through November 22, 2011, he neither earned any wages nor received any money from another source.

Because the Appeals Panel cannot remand a second time pursuant to Section 410.203(c), we must render a decision on the issue of compensable disability. While there is no medical evidence that takes the claimant off work after August 30, 2011, due to an injury sustained on [date of injury], the issue of disability may be based on the sole testimony of the claimant. Gee v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989) and APD 051383-s, decided August 9, 2005. We reverse the hearing officer’s decision as incomplete on the issue of disability and we render a new decision that the claimant had disability from August 30 through November 21, 2011, and that the claimant did not have disability from November 22 through November 25, 2011.

SUMMARY

We affirm the hearing officer’s determination that the claimant sustained a compensable injury on [date of injury].

We affirm the hearing officer’s determination that the carrier has waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022.

We affirm the hearing officer’s determination that the claimant, who was injured in [State2], is entitled to all rights and remedies under the 1989 Act.

We reverse the hearing officer's decision on remand as being incomplete and render a new decision that the claimant had disability from August 30 through November 21, 2011, but did not have disability from November 22 through November 25, 2011.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**DAVID L. SARGENT
901 MAIN STREET, SUITE 5200
[CITY], TEXAS 75202.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge