

APPEAL NO. 130281
FILED APRIL 8, 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 November 2, 2012, and continued on December 7, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant/cross-respondent (claimant) should be allowed to change treating doctors from [Dr. D] to [Dr. P]; (2) the claimant did sustain disability from the injury sustained on [date of injury], from August 24 through December 14, 2010, but not from December 15, 2010, through June 29, 2011; the claimant did sustain disability from June 30, 2011, through the date of the CCH; and (3) the compensable injury extends to the split tear of the peroneus brevis tendon with a peroneal split syndrome.

The claimant appealed a portion of the hearing officer's disability determination because the parties agreed at the CCH to modify the disability issue so that the only period in dispute was July 19, 2012, through the CCH. The appeal file does not contain a response from the respondent/cross-appellant (carrier) to the claimant's appeal. However, the carrier cross-appealed, disputing the hearing officer's determinations regarding the extent of the compensable injury, disability, and change of treating doctors. The claimant responded, urging affirmance of the hearing officer's extent of injury and change of treating doctor determinations and reasserting his position regarding the disability issue.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The claimant testified that he fell off of a loading dock, falling approximately 4 to 5 feet.

CHANGE OF TREATING DOCTORS

The hearing officer's determination that the claimant should be allowed to change treating doctors from Dr. D to Dr. P is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury extends to the split tear of the peroneus brevis tendon with a peroneal split syndrome is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue initially reported out of the benefit review conference was as follows: Did the claimant have disability resulting from an injury sustained on [date of injury], and if so, for what period? At the CCH, the parties stipulated that the time period of [date of injury], through July 18, 2012, had already been addressed by a prior decision and order or by agreement of the parties and therefore was not in dispute. Given the stipulation of the parties the only time period in dispute was July 19, 2012, through the date of the CCH. Because the hearing officer failed to include this stipulation in his decision and order he mistakenly determined periods of disability that were not at issue before him and exceeded the scope of the disputed disability issue. Accordingly, we reverse the hearing officer's decision by striking the following: the claimant sustained disability from the injury sustained on [date of injury], from August 24 through December 14, 2010, but not from December 15, 2010, through June 29, 2011. We also reverse the hearing officer's decision by striking that portion of the hearing officer's decision that the claimant did sustain disability from June 30, 2011, through July 18, 2012. The hearing officer found that during the period from June 30, 2011, through the date of the CCH, the claimant was unable to obtain and retain employment at wages equivalent to his pre-injury wage as a result of the compensable injury. That period found by the hearing officer (June 30, 2011, through the date of the CCH) includes the entire period of the disability issue before him as modified (July 19, 2012, through the CCH) and is supported by sufficient evidence. Accordingly, we render a new decision that the claimant had disability from July 19, 2012, through the date of the CCH.

SUMMARY

We affirm the hearing officer's determination that the claimant should be allowed to change treating doctors from Dr. D to Dr. P.

We affirm the hearing officer's determination that the compensable injury extends to the split tear of the peroneus brevis tendon with a peroneal split syndrome.

We reverse the hearing officer's determination that the claimant sustained disability from the injury sustained on [date of injury], from August 24 through December 14, 2010, but not from December 15, 2010, through June 29, 2011, and that portion of the hearing officer's determination that the claimant sustained disability from June 30,

2011, through July 18, 2012, and render a new decision that the claimant had disability from July 19, 2012, through the date of the CCH.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Carisa Space-Beam
Appeals Judge