

APPEAL NO. 130417
FILED APRIL 9, 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 12, 2012, with the record closing on December 19, 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], does not extend to aggravation of osteoarthritis of the AC joint, L5/left sided radiculopathy, L4-5 anterolithesis, and C5-6 cervical radiculopathy; (2) the compensable injury of [date of injury], does extend aggravation of osteoarthritis of the AC joint, the right shoulder rotator cuff tear, L4-5 disc protrusion, and cervical disc protrusion/herniated nucleus pulposus (HNP) at C5-6; (3) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from [Dr. L] on September 8, 2011, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (4) the respondent/cross-appellant (claimant) reached MMI on September 8, 2011; (5) the IR is five percent; and (6) the claimant had disability from an injury sustained on [date of injury], from September 8, 2011, through the CCH.

The appellant/cross-respondent (carrier) appealed the hearing officer's extent-of-injury determinations that were favorable to the claimant. The carrier also correctly notes the hearing officer made conflicting conclusions of law and the decision regarding whether or not the compensable injury extends to aggravation of osteoarthritis of the AC joint. The carrier also appealed the hearing officer's disability determination. The claimant responded, urging affirmance of the disputed determinations. The claimant also cross-appealed, disputing the hearing officer's determinations of finality of the first certification, MMI, IR, and the extent-of-injury determinations that were not favorable to him. The carrier responded, urging affirmance of the determinations disputed by the claimant.

DECISION

Affirmed in part as reformed 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 was working on scaffolding when a beam fell from above, striking him.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury extends to right shoulder rotator cuff tear, L4-5 disc protrusion, and cervical disc protrusion/HNP at C5-6 is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the compensable injury does not extend to L5/left sided radiculopathy, and L4-5 anterolisthesis is supported by sufficient evidence and is affirmed.

The issue reported out of the benefit review conference report as amended with agreement of the parties was whether the compensable injury of [date of injury], extends to cervical radiculopathy. The hearing officer determined that the compensable injury of [date of injury], does not extend to cervical radiculopathy but improperly added a specified level to his determination. We reform the hearing officer's determination to conform to the issue before the hearing officer and litigated by the parties to read in part as follows: the compensable injury of [date of injury], does not extend to cervical radiculopathy.

The hearing officer in Finding of Fact No. 4 found in part that the aggravation of osteoarthritis of the AC joint did not arise out of or naturally flow from the compensable injury of [date of injury]. That finding is supported by sufficient evidence. However, the hearing officer then made conflicting conclusions of law and a decision regarding the aggravation of osteoarthritis of the AC joint. In Conclusion of Law No. 3, the hearing officer determined in part that the compensable injury of [date of injury], does not extend to aggravation of osteoarthritis of the AC joint. In Conclusion of Law No. 4, the hearing officer found that the compensable injury of [date of injury], does extend to aggravation of osteoarthritis of the AC joint. The hearing officer made the same conflicting determinations in his decision. It is clear based on Finding of Fact No. 4 and the Background Information section of the hearing officer's decision that the hearing officer was not persuaded by the evidence before him that the compensable injury extends to aggravation of osteoarthritis of the AC joint but mistakenly included this condition in conflicting statements in his decision. Accordingly, we reverse that portion of the hearing officer's decision that the compensable injury of [date of injury], does extend to aggravation of osteoarthritis of the AC joint and render a new decision by striking that determination from Conclusion of Law No. 4 and the decision. We affirm that portion of the hearing officer's decision that the compensable injury of [date of injury], does not extend to aggravation of osteoarthritis of the AC joint.

FINALITY OF THE FIRST CERTIFICATION

The hearing officer's determination that the first certification of MMI and assigned IR from Dr. L on September 8, 2011, became final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

MMI and IR

The hearing officer's determination that the claimant reached MMI on September 8, 2011, is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the claimant's IR is five percent is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant had disability from an injury sustained on [date of injury], from September 8, 2011, through the CCH is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm that portion of the hearing officer's extent of injury determination that the compensable injury of [date of injury], does extend to right shoulder rotator cuff tear, L4-5 disc protrusion, and cervical disc protrusion/HNP at C5-6.

We affirm that portion of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], does not extend to aggravation of osteoarthritis of the AC joint, L5/left sided radiculopathy, and L4-5 anterolisthesis.

We reform that portion of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], does not extend to C5-6 radiculopathy by striking C5-6 to conform to the disputed issue before the hearing officer and litigated by the parties.

We reverse that portion of the hearing officer's determination that the compensable injury does extend to aggravation of osteoarthritis of the AC joint by striking that determination from Conclusion of Law No. 4 and the decision.

We affirm the hearing officer's determination that the first certification of MMI and assigned IR from Dr. L on September 8, 2011, became final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determination that the claimant reached MMI on September 8, 2011.

We affirm the hearing officer's determination that the claimant's IR is five percent.

We affirm the hearing officer's determination that the claimant had disability from an injury sustained on [date of injury], from September 8, 2011, through the CCH.

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

CINDY GHALIBAF
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IRVING, TEXAS 75039-3711.

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Carisa Space-Beam
Appeals Judge