

APPEAL NO. 130611
FILED MAY 1, 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 January 28, 2013 (not January 28, 2012, as cited in the decision and order) in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on November 8, 2011, as certified by [Dr. G], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division); (2) the claimant's impairment rating (IR) is five percent as assigned by Dr. G; (3) the compensable injury of [date of injury], does not extend to L2-3, L3-4, L4-5, and L3-4 disc protrusions; and (4) the first certification of MMI and assigned IR from Dr. G on November 8, 2011, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12).

The claimant appealed all of the hearing officer's determinations, and pointed out in his appeal that the hearing officer failed to discuss and make a determination regarding a disc protrusion at L5-S1, which was one of the claimed conditions before the hearing officer. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that: the claimant sustained a compensable injury in the form of a cervical sprain/strain, a thoracic sprain/strain, a lumbar sprain/strain, a chest contusion, a head contusion, and an [abdominal] contusion; the Division appointed Dr. G to serve as the designated doctor for the issues of MMI, IR, and ability to return to work; and that the date of statutory MMI is January 8, 2013.

EXTENT OF INJURY

In the decision and order, the hearing officer listed the extent-of-injury issue as "[d]oes the compensable injury of [[date of injury]], extend to . . . L2-3, L3-4, L4-5, and L3-4 disc protrusions?" The hearing officer references the claimed extent conditions in this same manner throughout the Background Information section, in Finding of Fact No. 6, Conclusion of Law No. 5, and the Decision portion of the decision and order. The hearing officer determined that the compensable injury of [date of injury], does not extend to "L2-3, L3-4, L4-5, and L3-4 disc protrusions." The hearing officer's determination that the compensable injury of [date of injury], does not extend to L2-3, L3-4, and L4-5 disc protrusions is supported by sufficient evidence and is affirmed.

However, a Benefit Review Conference (BRC) report dated June 8, 2012, listed the extent-of-injury dispute as “[d]oes the compensable injury of [date of injury], extend to . . . L2-3, L3-4, L4-5, and L5-S1 disc protrusions?” At the CCH held on January 28, 2013, the parties agreed to the extent-of-injury issue as described in the BRC report, including the L5-S1 disc protrusion. The hearing officer does not discuss or make findings of fact, conclusions of law, or a decision regarding the L5-S1 disc protrusion, which was properly before him. Accordingly, we reverse the hearing officer’s extent-of-injury determination as incomplete, and we remand the issue of whether the compensable injury of [date of injury], extends to the L5-S1 disc protrusion.

MMI/IR AND FINALITY

The hearing officer determined that the claimant reached MMI on November 8, 2011, with a five percent IR, and that the first certification of MMI and IR from Dr. G on November 8, 2011, became final under Section 408.123 and Rule 130.12. However, given that we have reversed and remanded the issue of whether the compensable injury of [date of injury], extends to the L5-S1 disc protrusion, we must also reverse the hearing officer’s determinations regarding MMI, IR, and finality of Dr. G’s MMI/IR certification, and remand those issues to the hearing officer for action consistent with this decision.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury of [date of injury], does not extend to L2-3, L3-4, and L4-5 disc protrusions.

We reverse the hearing officer’s extent-of-injury determination as incomplete and we remand the issue of whether the compensable injury of [date of injury], extends to the L5-S1 disc protrusion.

We reverse the hearing officer’s determinations that the claimant reached MMI on November 8, 2011, with a five percent IR, and remand the issues of MMI and IR to the hearing officer for action consistent with this decision.

We reverse the hearing officer’s determination that the first certification of MMI and assigned IR from Dr. G on November 8, 2011, became final under Section 408.123 and Rule 130.12, and remand the issue of finality to the hearing officer for action consistent with this decision.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge