

APPEAL NO. 130848  
FILED MAY 23, 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 February 22, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) had disability resulting from the injury sustained on [date of injury], beginning February 25, 2011, and continuing through the date of the CCH; (2) the claimant has not reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI, no impairment rating (IR) can be assigned; (4) the compensable injury of [date of injury], does extend to the tenosynovitis of the osteochondral talar lesion of the right ankle; and (5) the employer did not tender a bona fide offer of employment (BFOE) to the claimant.

The appellant (carrier) appealed, disputing the hearing officer's determinations of MMI, IR, disability and extent of injury. The claimant responded, urging affirmance of the disputed determinations. The hearing officer's determination that the employer did not tender a BFOE was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. Three issues were reported in the Benefit Review Conference Report: MMI, IR, and disability. At the CCH, the hearing officer stated that the parties agreed to add two issues: extent of injury and whether the employer tendered a BFOE. The hearing officer stated on the record that the extent of injury issue which the parties agreed to add was: Does the compensable injury of [date of injury], extend to tenosynovitis of the right ankle and osteochondral talar lesion of the right ankle? However, in his decision and order the hearing officer decided that the compensable injury does extend to "the tenosynovitis of the osteochondral talar lesion of the right ankle." The carrier in its appeal contends that the hearing officer misidentified the extent-of-injury issue. The carrier contends that the extent-of-injury conditions in dispute and agreed by the parties to add as an issue were two separate conditions of the right ankle. We agree.

The claimant underwent an MRI of his right ankle on April 21, 2011, and the impression given was in part that a narrowing of the tibiotalar joint space is seen, and a focal area of subchondral microtrabecular edema along the medial aspect of the talar dome is seen consistent with osteochondral injury. The claimant was diagnosed with an

osteocondral injury of the tibiotalar joint space and tenosynovitis of the posterior tibialis tendon. [Dr. A] was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to give an opinion regarding the extent of the claimant's compensable injury. In his report, dated October 16, 2012, Dr. A identifies the disputed diagnoses as: right ankle, osteochondral lesion of the talus and left posterior tibialis tenosynovitis. Dr. A clearly regards osteochondral lesion of the talus and left posterior tibialis tenosynovitis as two separate conditions. Because the hearing officer misidentified the conditions in dispute for the extent of the compensable injury by treating the two separate conditions as one (tenosynovitis of the osteochondral talar lesion of the right ankle), we reverse the hearing officer's decision that the compensable injury of [date of injury], does extend to "the tenosynovitis of the osteochondral talar lesion of the right ankle" and remand the extent-of-injury issue to the hearing officer to make a determination of whether the compensable injury extends to tenosynovitis of the right ankle and osteochondral talar lesion of the right ankle as agreed by the parties.

The hearing officer's determinations of MMI, IR, and disability are premised on his extent-of-injury determination which has been reversed and remanded as noted above. Accordingly, we reverse the hearing officer's determinations that: (1) the claimant had disability resulting from the injury sustained on [date of injury], beginning February 25, 2011, and continuing through the date of the CCH; (2) the claimant has not reached MMI; and (3) because the claimant has not reached MMI, no IR can be assigned, and we remand the issues of disability, MMI, and IR to the hearing officer for a determination after the correctly identified extent-of-injury issue which was agreed to by the parties has been resolved.

### **REMAND INSTRUCTIONS**

On remand the hearing officer is to make a determination regarding whether the compensable injury extends to tenosynovitis of the right ankle and osteochondral talar lesion of the right ankle. After a determination has been made regarding the extent of the compensable injury, the hearing officer is then to make a determination of disability, MMI, and IR.

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 **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
D/B/A CSC - LAWYERS INCORPORATING SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge