

APPEAL NO. 131684
FILED SEPTEMBER 13, 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 June 11, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. Regarding the disputed issues before her, the hearing officer determined that: (1) the appellant's (claimant) compensable injury of [date of injury], does not extend to impingement, bursitis, and osteoarthritis of the acromioclavicular joint of the right shoulder; (2) the claimant reached maximum medical improvement (MMI) on July 23, 2012; and (3) the claimant has a zero percent impairment rating (IR) as a result of her compensable injury of [date of injury].

The claimant appealed all of the hearing officer's determinations on a sufficiency of the evidence point of error. The claimant also contended that the hearing officer failed to make a finding of fact, conclusion of law, and a decision on all of the issues before her. Specifically, the claimant contends that the extent-of-injury issue certified out of the benefit review conference (BRC) and properly before the hearing officer included the condition of "a partial rotator cuff tear," and the hearing officer failed to make a decision on this issue. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that she was a customer service agent for the employer, and that her duties were to load and unload baggage on aircrafts. The claimant further testified that on the date of injury she felt a pull in her shoulder and pain in the soft tissue area between her neck and shoulder when she was handing multiple gate checked bags overhead to passengers.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to impingement, bursitis, and osteoarthritis of the acromioclavicular joint of the right shoulder is supported by sufficient evidence and is affirmed.

The BRC report in evidence lists the following as a disputed issue: "[d]oes the [date of injury], compensable injury extend to and include impingement and bursitis of the right shoulder, **a partial rotator cuff tear** [emphasis added] and osteoarthritis of the acromioclavicular joint of the right shoulder?" At the CCH both parties agreed that the

issue contained in the BRC report as stated above was the extent-of-injury issue to be determined at the CCH.

However, in her Decision and Order the hearing officer lists the extent-of-injury issue as follows: “[d]oes [the] [c]laimant’s compensable injury of [date of injury], extend to and include impingement, bursitis, and osteoarthritis of the acromioclavicular joint of the right shoulder?” The hearing officer included a footnote in her decision stating: “[a]lthough a partial rotator cuff tear was included in the issue as it was reported out of the [BRC], [the] [c]arrier acknowledged on the record at the [CCH] that this condition was included in the claim injury, as part of the accepted sprain/strain of the right shoulder.” The hearing officer made no further comments on the condition of a partial rotator cuff tear in her decision, nor did she make any findings of fact, conclusions of law, or a decision regarding that condition.

The hearing officer is correct: a review of the record reveals that the carrier does in fact state during closing arguments that it would agree the partial tear of the rotator cuff is part of the compensable injury. However, there was no stipulation on the record that the carrier has accepted a partial rotator cuff tear as part of the compensable injury, nor did the parties agree on the record to withdraw that condition from the disputed issue. Without either a stipulation or findings of fact, conclusions of law, or a decision, the compensability of a partial rotator cuff tear, which was a condition properly before the hearing officer, was never decided. Accordingly, we reverse that portion of the hearing officer’s extent-of-injury determination as incomplete and remand the issue of whether the compensable injury of [date of injury], extends to a partial rotator cuff tear.

MMI/IR

The hearing officer determined that the claimant reached MMI on July 23, 2012, and that the claimant has a zero percent IR. However, given that we have reversed and remanded the issue of whether the compensable injury of [date of injury], extends to a partial rotator cuff tear, we must also reverse the hearing officer’s determinations regarding MMI and IR, and remand those issues to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm that portion of the hearing officer’s determination that the compensable injury of [date of injury], does not extend to impingement, bursitis, and osteoarthritis of the acromioclavicular joint of the right shoulder.

We reverse the remainder of the hearing officer's extent-of-injury determination as incomplete and remand the issue of whether the compensable injury of [date of injury], extends to a partial rotator cuff tear.

We reverse the hearing officer's determinations that the claimant reached MMI on July 23, 2012, and that the claimant has a zero percent IR and remand the issues of MMI and IR to the hearing officer for further 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 Texas Department of Insurance, Division of Workers' Compensation, 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 **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge