

APPEAL NO. 131935  
FILED SEPTEMBER 26, 2013

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). After a continuance from April 15, 2013, a contested case hearing (CCH) was held on May 2, 2013, and July 17, 2013, 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 a large bucket handle tear of the lateral meniscus of the right knee, moderate osteoarthritis affecting the medial and lateral compartments of the right knee, internal derangement of the right knee, large bucket handle tear of the lateral meniscus of the left knee, osteoarthritis affecting the medial and lateral compartments of the left knee, and internal derangement of the left knee; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 8, 2012; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed the hearing officer's extent of injury, MMI and IR determinations. The claimant states on appeal that the hearing officer committed reversible error because: the hearing officer omitted from his decision the parties' stipulations on April 15, 2013, regarding left knee extent-of-injury conditions in dispute; the hearing officer erred by sending a request for a letter of clarification (LOC) to the designated doctor to address the left knee; and the claimant has not reached MMI and has no IR due to his left knee injury. The respondent (carrier) responded by urging affirmance of the hearing officer's decision. The carrier does not reply to the claimant's contention on appeal regarding stipulations and the request for a LOC sent to the designated doctor.

**DECISION**

Reformed in part, affirmed in part, and reversed and remanded in part.

**EVIDENCE PRESENTED**

We reform the hearing officer's decision to show that Claimant's Exhibit Nos. C-1 through C-6 were admitted into evidence and Claimant's Exhibit No. C-7 was not admitted into evidence.

**STIPULATIONS**

Section 410.166 and 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provide, in part, that an oral stipulation or agreement of the parties that is preserved in the record is final and binding on the date made.

The claimant's contention that the parties made the stipulations on April 15, 2013, as alleged above, is not supported by the evidence. Texas Department of Insurance, Division of Workers' Compensation (Division) records show that a CCH scheduled for April 15, 2013, was rescheduled to May 2, 2013, due to a scheduling conflict with the claimant's ombudsman. A second CCH was held on July 17, 2013.

Next, the claimant's contention that the parties made stipulations that the compensable injury of [date of injury], extends to a large bucket handle tear of the lateral meniscus of the left knee, osteoarthritis affecting the medial and lateral compartments of the left knee, and internal derangement of the left knee is not supported by the evidence. At the CCH held on May 2, 2013, the parties stipulated that the carrier has accepted a cervical sprain/strain, thoracic sprain/strain, and a meniscal tear of the left knee. At the CCH held on July 17, 2013, the carrier stated that it accepted a cervical sprain/strain, thoracic sprain/strain, meniscal tear of the left knee, bilateral shoulder strains, and right ankle sprain.

The hearing officer's Finding of Fact No. 1.D. omits stipulations made by the parties at the CCH on May 2, 2013, and July 17, 2013. We reform the hearing officer's Finding of Fact No. 1.D. to read that:

It is undisputed that the claimant sustained a compensable cervical **sprain/strain**, bilateral shoulders strain, right ankle strain, **thoracic sprain/strain, and meniscal tear of the left knee** on [date of injury]. (Emphasis added).

#### **EXTENT OF INJURY**

That portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to a large bucket handle tear of the lateral meniscus of the right knee, moderate osteoarthritis affecting the medial and lateral compartments of the right knee, internal derangement of the right knee, osteoarthritis affecting the medial and lateral compartments of the left knee, and internal derangement of the left knee is supported by sufficient evidence and is affirmed.

That portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to a large bucket handle tear of the lateral meniscus of the left knee is reversed.

In evidence is an MRI of the left knee dated July 31, 2012, which shows a medial meniscus tear and a lateral meniscus tear. In a request for a LOC dated May 24, 2013, the hearing officer informs [Dr. R], the designated doctor, that the claimant sustained "a compensable cervical strain, bilateral shoulder strain, and right ankle strain injury on [date of injury]," and asks whether the compensable injury extends to a large bucket

handle tear of the lateral meniscus of the left knee. We note that the hearing officer's request for a LOC did not state that the carrier had accepted a meniscal tear of the left knee. In an undated response Dr. R states that the left knee is not part of the compensable injury. At the CCH held on July 17, 2013, the parties were given the opportunity to respond to Dr. R's LOC, and the carrier again stated that it accepted the meniscal tear of the left knee.

In this case, the parties stipulated at the CCH held on May 2, 2013, that the compensable injury extends to a meniscal tear of the left knee. That stipulation is final and binding. See Section 410.166 and Rule 147.4(c). Given that the parties stipulated that the compensable injury extends to the meniscal tear of the left knee, and that the stipulation is final and binding, it must be determined whether or not a large bucket handle tear of the lateral meniscus of the left knee is a different condition from the accepted meniscal tear of the left knee. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury does not extend to a large bucket handle tear of the lateral meniscus of the left knee. We remand to the hearing officer to make a determination whether the compensable injury extends to a large bucket handle tear of the lateral meniscus of the left knee, consistent with this decision.

Furthermore, we note that Dr. R opined in his narrative report dated September 15, 2012, that the compensable injury includes a right knee sprain and assessed an impairment for the right knee sprain. In evidence is a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) dated September 19, 2012, which states that the right knee sprain was accepted by the carrier. The hearing officer did not make a determination and the parties did not stipulate that the compensable injury includes a right knee sprain. Given that we are remanding this case for the hearing officer to determine whether the compensable injury of [date of injury], extends to a large bucket tear of the lateral meniscus of the left knee, and the evidence purports to show that the carrier has accepted a right knee sprain injury, we also remand for the hearing officer to either request a stipulation or make a determination of whether the compensable injury of [date of injury], extends to a right knee sprain.

### **MMI/IR**

The Appeals Panel has held that an extent-of-injury issue is a threshold issue that must be resolved before MMI and IR can be resolved, and that the resolution of the MMI and IR issues will flow from the resolution of the extent issue. See Appeals Panel Decision (APD) 110854, decided August 15, 2011. See *also* APD 130499, decided May 6, 2013. Because we have reversed and remanded a portion of the extent of injury issue, we also reverse the hearing officer's determination that the claimant reached MMI

on August 8, 2012, with a zero percent IR, and remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

### **SUMMARY**

We reform the hearing officer's decision to show that Claimant's Exhibit Nos. C-1 through C-6 were admitted into evidence and Claimant's Exhibit No. C-7 was not admitted into evidence.

We reform the hearing officer's Finding of Fact No. 1.D. to read that: it is undisputed that the claimant sustained a compensable cervical sprain/strain, bilateral shoulders strain, right ankle strain, thoracic sprain/strain, and meniscal tear of the left knee on [date of injury].

We affirm that portion of the hearing officer's determination the compensable injury of [date of injury], does not extend to a large bucket handle tear of the lateral meniscus of the right knee, moderate osteoarthritis affecting the medial and lateral compartments of the right knee, internal derangement of the right knee, osteoarthritis affecting the medial and lateral compartments of the left knee, and internal derangement of the left knee.

We reverse that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to a large bucket handle tear of the lateral meniscus of the left knee, and we remand to the hearing officer to determine whether the compensable injury of [date of injury], extends to a large bucket handle tear of the lateral meniscus of the left knee.

We remand to the hearing officer to either request a stipulation or make a determination of whether the compensable injury of [date of injury], extends to a right knee sprain.

We reverse the hearing officer's determinations that the claimant reached MMI on August 8, 2012, with a zero percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. R is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. R is still qualified and available to be the designated doctor. If Dr. R is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the [date of injury], compensable injury.

The hearing officer is to determine whether the compensable injury of [date of injury], extends to a large bucket handle tear of the lateral meniscus of the left knee based on the evidence admitted in this case. The hearing officer is to either request a stipulation or make a determination of whether the compensable injury of [date of injury], extends to a right knee sprain.

After the hearing officer makes an extent-of-injury determination on the conditions of a large bucket handle tear of the lateral meniscus of the left knee and right knee sprain, the hearing officer is to advise the designated doctor of his extent of injury determinations of these conditions. Also, the hearing officer is to advise the designated doctor that the compensable injury of [date of injury], includes cervical sprain/strain, bilateral shoulders strain, right ankle strain, thoracic sprain/strain, and meniscal tear of the left knee. The hearing officer is to advise the designated doctor that the compensable injury of [date of injury], does not include a large bucket handle tear of the lateral meniscus of the right knee, moderate osteoarthritis affecting the medial and lateral compartments of the right knee, internal derangement of the right knee, osteoarthritis affecting the medial and lateral compartments of the left knee, and internal derangement of the left knee.

The hearing officer is to request the designated doctor to give an opinion on the claimant's MMI and IR by rating the entire compensable injury in accordance with the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on MMI, IR, and extent of injury 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** 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.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge