

APPEAL NO. 132059
FILED OCTOBER 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 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], extends to left shoulder impingement, degenerative joint disease at the left acromioclavicular joint, left rotator cuff tear, left labral tear, and left biceps tendon tear; and (2) the respondent (claimant) had disability from February 19 through March 15, 2013. The appellant (carrier) appeals the hearing officer's determinations of the extent of the compensable injury and disability. The carrier argues that the claimant failed to prove that the disputed conditions were part of her compensable injury and that she had any disability during the time period in dispute. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that she injured her left shoulder when lifting boxes while working for employer on [date of injury]. The claimant sought medical treatment and was given physical therapy.

DISABILITY

The disputed period of disability at the CCH was February 19, 2013, through the CCH. The hearing officer found in Finding of Fact No. 6 that the compensable injury was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her preinjury wage beginning on February 19, 2013, and continuing through March 15, 2013, only. That finding is supported by sufficient evidence. However, in both the conclusion of law and the decision the hearing officer only determined that the claimant had disability from February 19 through March 15, 2013, and did not cover the entire period in dispute. We affirm that portion of the hearing officer's determination that the claimant had disability from February 19 through March 15, 2013. We reverse the hearing officer's determination that the claimant had disability from February 19 through March 15, 2013, as being incomplete and render a new decision that the claimant had disability from February 19 through March 15, 2013, but did not have disability from March 16, 2013, through the date of the CCH.

EXTENT OF INJURY

Initially the only disputed issue before the hearing officer was a specified period of disability as discussed above. However, the parties agreed to add an extent-of-injury issue stated as follows: Does the [date of injury], compensable injury extend to left shoulder strain/sprain, left shoulder mild to moderate distal supraspinatus partial tear, left shoulder mild bursitis, left shoulder internal derangement, and rotator cuff syndrome of the left shoulder. The hearing officer found in Finding of Fact No. 5 that the left shoulder strain/sprain, left shoulder mild to moderate distal supraspinatus partial tear, left shoulder mild burisits, left shoulder internal derangement, and rotator cuff syndrome of the left shoulder arose out of or naturally flowed from the [date of injury], compensable injury. That finding is supported by sufficient evidence. However, the hearing officer in both his conclusions of law and decision determined that the compensable injury extends to conditions not in dispute before the hearing officer. The hearing officer determined that the compensable injury extends to left shoulder impingement, degenerative joint disease at the left acromioclavicular joint, left rotator cuff tear, left labral tear, and left biceps tendon tear which were all conditions that were not included in the disputed extent-of-injury issue before the hearing officer, nor were those conditions litigated by the parties at the CCH. Accordingly, we reverse the hearing officer's determination that the compensable injury extends to left shoulder impingement, degenerative joint disease at the left acromioclavicular joint, left rotator cuff tear, left labral tear, and left biceps tendon tear and render a new decision that the compensable injury extends to left shoulder strain/sprain, left shoulder mild to moderate distal supraspinatus partial tear, left shoulder mild bursitis, left shoulder internal derangement, and rotator cuff syndrome of the left shoulder to conform to the evidence and the hearing officer's Finding of Fact No. 5.

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 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge