

APPEAL NO. 140096
FILED MARCH 3, 2014

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 September 13, 2013,¹ and concluded on December 5, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [date of injury], compensable injury does not extend to anxiety and depression; (2) the [date of injury], compensable injury does extend to L4-5 annular tear, 3 mm disc herniation at L4-5, left knee contusion, left knee strain, and cervical sprain/strain; (3) the appellant (claimant) reached maximum medical improvement (MMI) on December 12, 2012; (4) the claimant's impairment rating (IR) is five percent; and (5) the claimant had disability during the period at issue only beginning on January 20, 2013, and continuing through May 21, 2013.

The claimant appealed the hearing officer's extent-of-injury determination adverse to him, as well as the hearing officer's MMI, IR, and disability determinations, arguing that those determinations are so against the great weight and preponderance of the evidence to be clearly wrong and manifestly unjust. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations. The hearing officer's determination that the [date of injury], compensable injury extends to L4-5 annular tear, 3 mm disc herniation at L4-5, left knee contusion, left knee strain, and cervical sprain/strain has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], at least in the form of a lumbar strain and left hip strain. The claimant, a veterinary technician, testified that he was injured when an eight-row rack of mice fell and landed on top of him.

EXTENT OF INJURY AND MMI/IR

The hearing officer's determinations that the [date of injury], compensable injury does not extend to anxiety and depression and that the claimant reached MMI on December 12, 2012, with a five percent IR are supported by sufficient evidence and are affirmed.

¹ We note that the hearing officer's decision and order does not list the September 13, 2013, CCH date.

DISABILITY

The issue reported on the Benefit Review Conference Report is whether the claimant had disability “from [August 13, 2012], through [January 31, 2013], resulting from the [date of injury], compensable injury[.]” The parties agreed at both CCH settings that the disability period at issue was from August 13, 2012, through January 31, 2013.

The hearing officer incorrectly lists the disability issue as whether the claimant had disability “from August 31, 2012, through January 31, 2013.” The hearing officer states in the Background Information section of the decision that “[Work Status Report (DWC-73s)] from [Dr. W] supports [the] [c]laimant’s position that he was only able to work with restrictions from January 10, 2013, through May 21, 2013.” We note that there are DWC-73s in evidence from Dr. W stating that the claimant could return to work with restrictions beginning January 10, 2013, through May 21, 2013. The hearing officer in Finding of Fact No. 9 finds that “[t]he compensable injury was a cause of [the] [c]laimant’s inability to obtain and retain employment at wages equivalent to his preinjury wage only beginning on January 10, 2013, and continuing through May 21, 2013.” However, the hearing officer states in Conclusion of Law No. 7 and in the Decision portion of the decision that the claimant “had disability during the period at issue only beginning on January 20, 2013, and continuing through May 21, 2013.” We note that the record does not indicate that the parties litigated disability beyond January 31, 2013.

The hearing officer made no determination regarding the specific dates that the claimant did not have disability. As mentioned above, the decision incorrectly lists the disability issue as August 31, 2012, through January 31, 2013. It is unclear from the hearing officer’s decision that she considered and made a determination regarding disability from August 13, 2012, through January 31, 2013, which was the actual disability period in dispute. Additionally, the hearing officer’s determination that the claimant had disability during the period at issue only beginning on January 20, 2013, and continuing through May 21, 2013, exceeded the disability period at issue before her. For these reasons, we reverse the hearing officer’s determination that the claimant had disability during the period at issue only beginning on January 20, 2013, and continuing through May 21, 2013, and we remand the issue of whether the claimant had disability from August 13, 2012, through January 31, 2013, for the hearing officer to reconsider the existing record and determine the dates of disability, if any, consistent with this decision. There is to be no new evidence presented by the parties.

SUMMARY

We affirm the hearing officer's determination that the [date of injury], compensable injury does not extend to anxiety and depression.

We affirm the hearing officer's determinations that the claimant reached MMI on December 12, 2012, with a five percent IR.

We reverse the hearing officer's determination that the claimant had disability during the period at issue only beginning on January 20, 2013, and continuing through May 21, 2013, and we remand the issue of whether the claimant had disability from August 13, 2012, through January 31, 2013, which was the actual disability issue to be determined by the hearing officer.

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 **SENTRY CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Tracey T. Guerra
Appeals Judge

Margaret L. Turner
Appeals Judge