

APPEAL NO. 140123
FILED MARCH 14, 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 was held on December 5, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the compensable injury of [date of injury], does not extend to lumbar radiculopathy, chronic pain syndrome, post-operative L5-S1 decompression with posterior lumbar interbody fusion, post-operative decompression of the L3-4, L4-5, and L5-S1 levels, and annular tears at L2-3 and L3-4 with disc degeneration at L3-4. The appellant (claimant) appealed, disputing the hearing officer's determination of the extent of the compensable injury. The claimant argues that the designated doctor appointed to opine on the extent of the compensable injury did not have all of the claimant's medical records and that the respondent (carrier) has paid the claim for the lumbar spine for over 20 years. The carrier responded, urging affirmance of the disputed extent-of-injury determination.

DECISION

Reversed and remanded.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury. The claimant testified that he injured his lumbar spine when he fell while trying to grab a metal part off of an assembly line that slipped and hit his right leg. The claimant testified that when he attempted to get up he felt pain in his back.

The evidence reflects that [Dr. A] was appointed as the designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division) on August 5, 2011, to opine on the extent of the claimant's compensable injury. Dr. A examined the claimant on September 9, 2011. In his narrative report, Dr. A notes in his review of the records: "October 14, 1992. The first record I have on him is from [Dr. JR] Neurosurgeon." In evidence were peer review reports which reference medical records of the claimant that were reviewed for numerous dates in 1991, one of which listed a CT scan performed on the date of injury, [date of injury].

Section 408.0041(a)(3) provides that at the request of the insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the extent of the employee's compensable injury. See *also* 28 TEX. ADMIN. CODE § 127.1(a)(3) (Rule 127.1(a)(3)). Rule 127.10(a)(1) provides in part that the treating doctor and insurance carrier shall provide to the designated doctor copies of all the injured employee's medical records in their

possession relating to the medical condition to be evaluated by the designated doctor. See *also* Rules 127.10(a)(3) and 127.10(b).

It is clear from Dr. A's narrative report that he did not have all of the claimant's medical records as required by Rule 127.10 when he determined the extent of the compensable injury. See Appeals Panel Decision (APD) 071721, decided November 19, 2007, and APD 110432, decided June 9, 2011. Accordingly, we reverse the hearing officer's determination that the claimant's compensable injury does not extend to lumbar radiculopathy, chronic pain syndrome, post-operative L5-S1 decompression with posterior lumbar interbody fusion, post-operative decompression of the L3-4, L4-5, and L5-S1 levels, and annular tears at L2-3 and L3-4 with disc degeneration at L3-4 and remand the extent-of-injury issue to the hearing officer for consideration of all of the evidence and for further proceedings consistent with this decision.

On remand the hearing officer shall cause to be forwarded to Dr. A copies of all the claimant's medical records relating to the medical conditions to be evaluated that have not previously been provided to Dr. A. The hearing officer is to provide Dr. A's response to the parties and allow the parties an opportunity to respond, and then make a determination regarding the extent-of-injury issue.

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 **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Tracey T. Guerra
Appeals Judge

Carisa Space-Beam
Appeals Judge