APPEAL NO. 140264
FILED APRIL 11, 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 December 12, 2013, in [City], Texas, with [hearing officer] presiding as the hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to a 5th metatarsal fracture after September 6, 2011; and (2) the treatment rendered by respondent 2 (subclaimant) during the period of September 7, 2011, through May 22, 2012, was treatment for the compensable injury of [date of injury], for a fracture of the 5th metatarsal.

The appellant (self-insured) appealed all of the hearing officer's determinations, arguing that there was not sufficient evidence to support the determinations and that the hearing officer did not have jurisdiction to decide whether the treatment rendered by the subclaimant during the period of September 7, 2011, through May 22, 2012, was treatment for the compensable injury of [date of injury], for a fracture of the 5th metatarsal because the proper venue for that determination is medical dispute resolution. The subclaimant responded, urging affirmance of the hearing officer's determinations. The appeal file does not contain a response from respondent 1 (claimant).

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as described by Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described by Subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the [CCH] that require correction but do not affect the outcome of the hearing. This is a case of first impression and is a situation with an error that requires correction, but the error does not affect the outcome of the hearing.

The parties stipulated on the record that: (1) the claimant sustained a compensable injury on [date of injury], and (2) the self-insured accepts that a fracture of the 5th metatarsal is included in the compensable injury before September 7, 2011, but not thereafter.

ISSUE NO. 1

The Decision and Order lists Issue No. 1 as "[w]as the treatment rendered by [the subclaimant] during the period September 7, 2011 through May 22, 2012 treatment for the compensable injury of [date of injury] for a fracture of the 5th metatarsal?" The parties agreed on the record and the Benefit Review Conference (BRC) Report states that the issue should be "[w]as the treatment rendered by [the subclaimant] during the period September 7, 2011 through May 22, 2012 for the compensable injury of [date of injury] for a fracture of the **left** 5th metatarsal?" However, Issue No. 1 as listed in the Decision and Order does not include the word "left." Therefore, we reform Issue No. 1 by adding the word "left" directly before "5th metatarsal."

ISSUE NO. 2

The hearing officer added Issue No. 2 because it was actually litigated by the parties. Issue No. 2 was also requested by the self-insured in Carrier's Request for Correction and Clarification of the Issues and Argument in Support. The self-insured's request, filed in response to the BRC Report, requests the following issue: "[d]oes the compensable injury of [date of injury] extend to and include a fracture of the **left** 5th metatarsal after [September 7, 2011]?" At the hearing, the self-insured urged that the issue be worded the same way as in its request. However, the decision again leaves out the word "left" and states the issue as: "[d]oes the compensable injury of [date of injury] extend to and include a fracture of the 5th metatarsal after September 6, 2011?" The parties litigated whether the compensable injury extends to a fracture of the left 5th metatarsal after September 6, 2011. Therefore, we reform Issue No. 2 in the Decision and Order to read: "[d]oes the compensable injury of [date of injury] extend to and include a fracture of the left 5th metatarsal after September 6, 2011?"

FINDINGS OF FACT NOS. 6, 7, AND 8; CONCLUSIONS OF LAW NOS. 3 and 4; AND THE DECISION

As with Issue Nos. 1 and 2, the hearing officer failed to include the word "left" before "5th metatarsal" in Findings of Fact Nos. 6, 7, and 8; Conclusions of Law Nos. 3 and 4; and the Decision section of the Decision and Order. To conform with the wording of the issues as litigated, we reform Findings of Fact Nos. 6, 7, and 8; Conclusions of Law Nos. 3 and 4; and the Decision section of the Decision and Order by inserting "left" before every instance of "5th metatarsal."

EXTENT OF INJURY

The hearing officer's determination, as reformed, that the compensable injury of [date of injury], extends to a left 5th metatarsal fracture after September 6, 2011, is supported by sufficient evidence and is affirmed.

RELATEDNESS OF TREATMENT TO COMPENSABLE INJURY

The hearing officer's determination, as reformed, that the treatment rendered by the subclaimant during the period of September 7, 2011, through May 22, 2012, was treatment for the compensable injury of [date of injury], for a fracture of the left 5th metatarsal is supported by sufficient evidence and is affirmed.

The self-insured argued at the hearing that the proper venue for a determination of whether the treatment at issue was reasonable and necessary for the compensable injury of [date of injury], is medical dispute resolution. We note that the self-insured is correct that, in this case, a dispute regarding whether treatment is reasonable and necessary would be governed by Sections 413.031, 413.0311, Insurance Code Chapter 4202, and 28 TEX. ADMIN. CODE § 133.308 (Rule 133.308). However, the issue decided by the hearing officer did not address whether the treatment was reasonable and necessary. The hearing officer merely addressed whether the treatment was **for** the compensable injury.

SUMMARY

We reform Issue No. 1 to add the word "left" before the words "5th metatarsal."

We reform Issue No. 2 to read "[d]oes the compensable injury of [date of injury] extend to and include a fracture of the left 5th metatarsal after September 6, 2011?"

We reform Findings of Fact Nos. 6, 7, and 8; Conclusions of Law Nos. 3 and 4; and the Decision section of the Decision and Order by inserting the word "left" before every instance of the words "5th metatarsal."

We affirm as reformed the hearing officer's determination that the compensable injury of [date of injury], extends to a left 5th metatarsal fracture after September 6, 2011.

We affirm as reformed the hearing officer's determination that the treatment rendered by the subclaimant during the period of September 7, 2011, through May 22, 2012, was treatment for the compensable injury of [date of injury], for a fracture of the left 5th metatarsal.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person, the address is:

JONATHAN D. BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail, the address is:

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P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

Tracey T. Guerra
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge