

APPEAL NO. 140296
FILED APRIL 1, 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 17, 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], does not extend to mild posterior disc bulge and spondylolytic change efface the anterior subarachnoid space at C3-4, C4-5, C5-6, and C6-7, desiccated and degenerative disc/arthritis disease and a neurologic impingement to the right at the C3-4 level and just arthritis at the other levels, radiculopathy, myelopathy, and spinal stenosis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on [date of injury]; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant did not have disability from February 16 to November 15, 2013, resulting from an injury sustained on [date of injury].

The claimant appealed all of the hearing officer's determinations. The respondent (self-insured) responded, urging affirmance of the hearing officer's determinations.

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 case is a situation with errors that require correction, but the errors do not affect the outcome of the hearing.

The claimant testified that she was working at the Texas Juvenile Justice Department and was injured when one juvenile inmate fell on her while she was trying to separate two fighting inmates.

FINDING OF FACT NO. 1.E.

The parties stipulated on the record that the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, for the

purpose of MMI, IR, and return to work (RTW), is [Dr. F]. However, Finding of Fact No. 1.E. incorrectly includes the purpose of “extent of injury” in the stipulation. The parties did not stipulate that Dr. F was appointed for the purpose of extent of injury, the Discussion section of the decision only discusses Dr. F as appointed for the issues of MMI, IR, and RTW, Dr. F did not opine on extent of injury in his report, and the evidence reflects that Dr. F was only appointed on the issues of MMI, IR, and RTW. Therefore, we reform Finding of Fact No. 1.E. to state that the Division-appointed designated doctor, for the purpose of MMI, IR, and RTW, is Dr. F.

DISABILITY

The hearing officer’s determination that the claimant did not have disability from February 16 to November 15, 2013, resulting from an injury sustained on [date of injury], is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The hearing officer’s determination that the compensable injury of [date of injury], does not extend to mild posterior disc bulge and spondylitic change efface the anterior subarachnoid space at C3-4, C4-5, C5-6, and C6-7, desiccated and degenerative disc/arthritis disease and a neurologic impingement to the right at the C3-4 level and just arthritis at the other levels, radiculopathy, myelopathy, and spinal stenosis is supported by sufficient evidence and is affirmed. The first paragraph of the Decision and Order, the Statement of the Case, Discussion, Finding of Fact Nos. 3 and 4, and Conclusion of Law No. 3 all reflect the correct conditions at issue. However, in the Decision section of the decision and order, the hearing officer states that “[t]he compensable injury does not extend to include central canal spinal stenosis with cervical instability at the C4-5 and C5-6 levels of the cervical spine.” This does not match with anything else contained in the decision or the record, and the issues were not worded or litigated in this way. We therefore reform the first sentence in the Decision section to state:

The compensable injury does not extend to include mild posterior disc bulge and spondylitic change efface the anterior subarachnoid space at C3-4, C4-5, C5-6, and C6-7, desiccated and degenerative disc/arthritis disease and a neurologic impingement to the right at the C3-4 level and just arthritis at the other levels, radiculopathy, myelopathy, and spinal stenosis.

MMI/IR

In the first paragraph of the Decision and Order, the Discussion, and Finding of Fact No. 5, the hearing officer correctly states that the claimant reached MMI on February 15, 2013, with an IR of five percent. The evidence reflects that Dr. F certified MMI on February 15, 2013, with an IR of five percent, and there were no other certifications from Dr. F or any other doctor in evidence. However, in Conclusion of Law No. 4 and the second sentence of the Decision section, the hearing officer erroneously used the claimant's date of injury, [date of injury], as the MMI date. Accordingly, we reform Conclusion of Law No. 4 and the second sentence of the Decision section to state that the date of MMI is February 15, 2013.

As reformed, the hearing officer's determination that the claimant reached MMI on February 15, 2013, is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the claimant's IR is five percent is supported by sufficient evidence and is affirmed.

SUMMARY

We reform Finding of Fact No. 1.E. to state that the Division-appointed designated doctor, for the purpose of MMI, IR, and RTW is Dr. F.

We affirm as reformed the hearing officer's determination that the compensable injury of [date of injury], does not extend to include mild posterior disc bulge and spondylolytic change efface the anterior subarachnoid space at C3-4, C4-5, C5-6, and C6-7, desiccated and degenerative disc/arthritis disease and a neurologic impingement to the right at the C3-4 level and just arthritis at the other levels, radiculopathy, myelopathy, and spinal stenosis.

We affirm as reformed the hearing officer's determination that the claimant reached MMI on February 15, 2013.

We affirm the hearing officer's determination that the claimant's IR is five percent.

We affirm the hearing officer's determination that the claimant did not have disability from February 16 to November 15, 2013, resulting from an injury sustained on [date of injury].

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:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Tracey T. Guerra
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge