

APPEAL NO. 140601
FILED MAY 19, 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 24, 2013, and continued with the record closing on February 12, 2014, 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], does not extend to major depressive disorder, anxiety disorder, and acute stress disorder;¹ (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on March 25, 2012; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant had disability resulting from the compensable injury of [date of injury], during the period beginning March 5, 2012, through October 24, 2012, but she did not have disability during the period beginning October 25, 2012, through February 12, 2014.

The claimant appealed the hearing officer's extent of injury, MMI and IR determinations. The claimant also appealed that portion of the hearing officer's determination that the claimant did not have disability from the compensable injury of [date of injury], during the period beginning October 25, 2012, through February 12, 2014. The respondent/cross-appellant (self-insured) responded to the claimant's appeal, urging affirmance of the hearing officer's determinations. The self-insured appealed that portion of the hearing officer's determination that the claimant had disability resulting from the compensable injury of [date of injury], during the period beginning March 5, 2012, through October 24, 2012. The self-insured alleges that the hearing officer's disability determination is not supported by the evidence because the claimant's compensable injuries are limited to scratches to her face and both arms, and the period of disability found by the hearing officer is based on the extent-of injury conditions the hearing officer determined were not compensable. The claimant did not respond to the self-insured's cross-appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury at least in the form of scratches to the face and both arms; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division)

¹ The extent-of-injury issue was amended upon agreement of the parties to include the condition of acute stress disorder.

appointed [Dr. F], as the designated doctor for purposes of MMI, IR, extent of injury, disability, and return to work; (3) on November 15, 2012, Dr. F certified that the claimant reached MMI on October 25, 2012, with a zero percent IR; (4) on September 13, 2013, the referral treating doctor, [Dr. B] certified that the claimant had not yet reached MMI; (5) the Division appointed [Dr. O], as the second designated doctor for purposes of MMI, IR, extent of injury and disability; and (6) on January 10, 2014, Dr. O certified that the claimant reached MMI on March 25, 2012, with a zero percent IR.

EXTENT OF INJURY, MMI, AND IR

The hearing officer's determinations that: (1) the compensable injury of [date of injury], does not extend to major depressive disorder, anxiety disorder, and acute stress disorder; (2) the claimant reached MMI on March 25, 2012; and (3) the claimant's IR is zero percent are supported by sufficient evidence and are affirmed.

DISABILITY

That portion of the hearing officer's determination that the claimant did not have disability resulting from the compensable injury of [date of injury], during the period beginning October 25, 2012, through February 12, 2014, is supported by sufficient evidence and is affirmed.

That portion of the hearing officer's determination that the claimant did have disability resulting from the compensable injury of [date of injury], during the period beginning March 5, 2012, through October 24, 2012, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust and is reversed as explained below.

Section 401.011(16) defines "[d]isability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." In determining disability, it is necessary for the hearing officer to determine what the form of the compensable injury is, in order to address the disability issue.

It is undisputed that on the date of injury, [date of injury], the claimant was employed by the self-insured on the weekends, Saturday and Sunday, for 32 hours per week, and that she was also employed by another employer performing a clerical job full-time, Monday through Friday, 40 hours per week. On the date of injury, [date of injury], while at work at a mental facility for the self-insured, the claimant was attacked by a patient who was HIV positive and had scratched the claimant's face and both arms. As previously mentioned above, the parties stipulated that on [date of injury], the

claimant sustained a compensable injury at least in the form of scratches to the face and both arms. The hearing officer determined that the compensable injury of [date of injury], does not extend to major depressive disorder, anxiety disorder, and acute stress disorder, and that determination is affirmed in this decision.

In the Discussion section of the decision, the hearing officer states that Dr. O “determined the [c]laimant could return to work with restrictions beginning [date of injury], and released the [c]laimant to full duty beginning October 25, 2012.” Dr. O states in his narrative report dated January 30, 2014, that “[a]lthough the only compensable injury is scratches to the face and both arms, the [claimant] did suffer psychological trauma from the incident.” A Work Status Report (DWC-73) dated January 10, 2014, from Dr. O states that the claimant can return to work beginning [date of injury], through October 24, 2012, with restrictions, listing the restrictions as “[d]epression/anxiety” and “no direct contact with patients.” Furthermore, the hearing officer states in the Discussion of her decision that “[t]he evidence presented [at the CCH] indicated [the] [c]laimant did not return to work at the mental facility [for the self-insured] following the compensable injury because she was scared of being hurt; however, she continued to work [the clerical job] on a full-time basis and she reported satisfaction from her work and claimed it helped her with her healing.” It is apparent that the hearing officer is basing her determination that the claimant had disability beginning March 5, 2012, through October 24, 2012, on the claimant’s extent-of-injury conditions in dispute which she determined, and we have affirmed, are not part of the compensable injury of [date of injury]. Given that the claimant’s compensable injuries are scratches to her face and both arms, and we are affirming the hearing officer’s determination that the compensable injury of [date of injury], does not extend to major depressive disorder, anxiety disorder, and acute stress disorder, we reverse that portion of the hearing officer’s determination that the claimant had disability resulting from the compensable injury of [date of injury], during the period beginning March 5, 2012, through October 24, 2012. That portion of the hearing officer’s disability determination is not supported by the evidence, and it is so against the great weight and preponderance of the evidence to be clearly wrong and manifestly unjust.

We reverse that portion of the hearing officer’s determination that the claimant had disability resulting from the compensable injury of [date of injury], during the period beginning March 5, 2012, through October 24, 2012, and we render a new decision that the claimant did not have disability resulting from the compensable injury of [date of injury], during the period beginning March 5, 2012, through October 24, 2012.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to major depressive disorder, anxiety disorder, and acute stress disorder.

We affirm the hearing officer's determination that the claimant reached MMI on March 25, 2012, with a zero percent IR.

We affirm that portion of the hearing officer's determination that the claimant did not have disability resulting from the compensable injury of [date of injury], during the period beginning October 25, 2012, through February 12, 2014.

We reverse that portion of the hearing officer's determination that the claimant had disability resulting from the compensable injury of [date of injury], during the period beginning March 5, 2012, through October 24, 2012, and we render a new decision that the claimant did not have disability resulting from the compensable injury of [date of injury], during the period beginning March 5, 2012, through October 24, 2012.

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

[MF]
[ADDRESS]
[CITY], TEXAS [ZIP CODE].

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge