

APPEAL NO. 140760
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 February 28, 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 lumbar radiculopathy, failed back syndrome, blood clot and a stroke; and (2) the appellant/cross-respondent (claimant) had disability only beginning on June 14, 2013, and continuing through January 13, 2014, but not from January 14, 2014, and continuing through the date of the CCH.

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, and that portion of the disability determination that was not favorable to the claimant. The respondent/cross-appellant (carrier) responded, urging affirmance of the extent-of-injury determination and that portion of the disability determination that the claimant did not have disability.

The carrier cross-appealed the hearing officer's determination that the claimant had disability beginning on June 14, 2013, and continuing through January 13, 2014. The carrier contended that the Work Status Reports (DWC-73s) in evidence referenced by the hearing officer in her decision that take the claimant off work are not based on the compensable injury of [date of injury]. The claimant responded that although the hearing officer could and should have found that the claimant had disability beginning on June 14, 2013, through the date of the CCH, the finding of a January 13, 2014, ending date of disability "does not make any sense" and "is a misreading of the DWC-73" in evidence.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury at least in the form of a lumbar sprain, right shoulder sprain, right hip contusion, and right upper arm contusion. The claimant testified that he fell two feet off a scaffold and landed on his right side. It is undisputed that at the time of his fall, the claimant had in place a spinal stimulator from a prior injury and that the claimant had spinal surgery to repair a spinal stimulator on July 11, 2013.

EXTENT OF INJURY

The hearing officer's determination that the [date of injury], compensable injury does not extend to lumbar radiculopathy, failed back syndrome, blood clot and a stroke is supported by sufficient evidence and is affirmed.

DISABILITY

Disability means the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that he had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove that the compensable injury was the sole cause of his disability; only that it was a producing cause. APD 042097, *supra*.

The hearing officer states in the Discussion portion of her decision that the "[c]laimant submitted DWC-73s from various medical providers which released him from work duties completely from June 14, 2013, through January 13, 2014, due to the compensable injury." The evidence shows that the most recent DWC-73 dated November 15, 2013, from the claimant's treating doctor, [Dr. S], takes the claimant off work from November 15, 2013, through January 3, 2014, and lists a diagnosis of right rotator cuff tendinitis. There is no DWC-73 in evidence with an ending date of January 13, 2014. Some of the other DWC-73s in evidence reflect a sprain/strain as a work injury diagnosis, and some reference complications due to the spinal surgery. There are inconsistencies between the hearing officer's discussion of the DWC-73s and the record. Further, the claimant testified that he could not work, however, his testimony did not reference a specific date of January 13, 2014. The hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer's determination that the claimant had disability only beginning on June 14, 2013, and continuing through January 13, 2014, but not from January 14, 2014, and continuing through the date of the CCH.

SUMMARY

We affirm the hearing officer's determination that the [date of injury], compensable injury does not extend to lumbar radiculopathy, failed back syndrome, blood clot and a stroke.

We reverse the hearing officer's determination that the claimant had disability only beginning on June 14, 2013, and continuing through January 13, 2014, but not from January 14, 2014, and continuing through the date of the CCH, and we remand the disability issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer should consider the claimant's testimony and all of the DWC-73s as well as the other evidence in the record considering the compensable injury only and then make a determination of whether the claimant had disability from June 14, 2013, through the date of the CCH consistent with the evidence.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD GERGASKO, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge