

APPEAL NO. 140781
FILED MAY 29, 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 January 21, 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], extends to a lumbar sprain/strain and a concussion with post-traumatic headaches; (2) the compensable injury of [date of injury], does not extend to lumbar radiculopathy, an L2-3 disc protrusion/herniation, an L3-4 disc protrusion/herniation, an L4-5 disc protrusion/herniation, or an L5-S1 disc protrusion/herniation; (3) the respondent (claimant) reached maximum medical improvement (MMI) on November 9, 2012; and (4) the claimant's impairment rating (IR) is seven percent.

The appellant (carrier) appeals the hearing officer's determination that the compensable injury of [date of injury], extends to a concussion with post-traumatic headaches. The carrier alleges that both parties signed a Benefit Dispute Agreement (DWC-24) that was approved by the hearing officer subsequent to the hearing officer's Decision and Order in which the parties agreed that the compensable injury does not extend to a concussion with post-traumatic headaches. The carrier contends that the DWC-24 supersedes the hearing officer's extent-of-injury determination in favor of the claimant. The appeal file does not contain a response from the claimant to the carrier's appeal.

The hearing officer's determinations that the compensable injury of [date of injury], extends to a lumbar sprain/strain; that the compensable injury of [date of injury], does not extend to lumbar radiculopathy, an L2-3 disc protrusion/herniation, an L3-4 disc protrusion/herniation, an L4-5 disc protrusion/herniation, or an L5-S1 disc protrusion/herniation; that the claimant reached MMI on November 9, 2012; and that the claimant's IR is seven percent have not been appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

As previously mentioned, the claimant failed to appear at the CCH scheduled on January 21, 2014, and failed to respond to a 10-day letter. The hearing officer's decision was mailed to the claimant at his correct address on March 17, 2014. Pursuant to 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), unless the great weight of the evidence indicates otherwise, the claimant was deemed to have received the

hearing officer's decision five days later. The fifth day after March 17, 2014, is Saturday, March 22, 2014, so pursuant to Rule 102.3(a)(3) the deemed date of receipt of the hearing officer's decision is Monday, March 24, 2014.

However, prior to receiving the hearing officer's decision, the claimant signed a DWC-24 on March 8, 2014 regarding the issues decided at the January 21, 2014, CCH. In that DWC-24 the parties agreed that: (1) the compensable injury extends to lumbar sprain/strain; (2) **the compensable injury does not extend to a concussion with post-traumatic headaches** (emphasis added), lumbar radiculopathy, or disc protrusions/herniations at L2-3, L3-4, L4-5, or L5-S1; and (3) the claimant reached MMI on November 9, 2012, with a seven percent IR as certified by [Dr. B], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division). Division records reflect that the hearing officer approved the DWC-24 on March 27, 2014, subsequent to issuing the decision on appeal.

The carrier appealed the hearing officer's determination that the compensable injury extends to a concussion with post-traumatic headaches, contending that because the parties have agreed in a DWC-24 approved by the hearing officer that the compensable injury does not extend to that condition, the DWC-24 supersedes the hearing officer's determination that conflicts with the DWC-24. The carrier correctly noted that the hearing officer's decision is otherwise in conformance with the DWC-24. As previously mentioned, the appeal file contains no response from the claimant.

Rule 147.7 is entitled "Effect on Previously Entered Decisions and Orders" and in subsection (a) provides that a written agreement on one or more disputed issues addressed in a presiding officer's decision or order, including an interlocutory order, sets aside the decision or order, as it relates to the agreement, on the date the agreement is approved by the presiding officer. *See also* Appeals Panel Decision 051251, decided July 27, 2005. In order to conform to the DWC-24 approved by the hearing officer subsequent to his decision, we reverse the hearing officer's determination that the compensable injury of [date of injury], extends to a concussion with post-traumatic headaches, and we render a new decision that the compensable injury of [date of injury], does not extend to a concussion with post-traumatic headaches.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201-4234.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge