

APPEAL NO. 140903
FILED JUNE 23, 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 April 10, 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 internal disc derangement and a disc bulge at L3-4; (2) the respondent (claimant) reached maximum medical improvement (MMI) on March 22, 2013; (3) the claimant's impairment rating (IR) is five percent;¹ and (4) the claimant had disability resulting from the compensable injury of [date of injury], from August 10, 2012, through March 22, 2013. The appellant (self-insured) appeals the hearing officer's determination of the extent of the compensable injury, MMI, IR, and disability. The self-insured argued that the extent-of-injury issue before the hearing officer included disc disruption and a disc bulge at L3-4 rather than disc derangement. The self-insured maintained that the claimant did not provide sufficient causation to establish that the compensable injury extends to the disputed conditions. The claimant responded, urging affirmance of the disputed issues. The claimant also acknowledged that the hearing officer erred in finding that internal disc "derangement" was the issue before her to decide but contended it was merely a typographical error.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the claimant's statutory MMI date is March 22, 2013. The claimant testified that she injured her low back when she picked up a 25 pound bag of dog food to scan.

DISABILITY

The hearing officer's determination that the claimant had disability resulting from the compensable injury of [date of injury], from August 10, 2012, through March 22, 2013, is supported by sufficient evidence and is affirmed.

¹ We note the hearing officer determined that the claimant's IR is five percent in Conclusion of Law No. 5 but in her decision determined the claimant's IR is zero percent. A review of the record reflects that the certification from the treating doctor, [Dr. T], certified that the claimant reached MMI on March 22, 2013, with a five percent IR.

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury extends to a disc bulge at L3-4 is supported by sufficient evidence and is affirmed.

The hearing officer added an extent-of-injury issue at the CCH. A review of the record reflects that the issue added was: Does the compensable injury of [date of injury], extend to internal disc disruption and disc bulge at L3-4? However, in the decision and order the hearing officer added the following issue: Does the compensable injury of [date of injury], extend to internal disc derangement and disc bulge at L3-4? It was acknowledged on the record that the internal disc disruption was specific to the L3-4 level. Both the self-insured in its request for review and the claimant in her response acknowledge that the hearing officer mistakenly identified the issue as internal disc derangement rather than internal disc disruption. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury of [date of injury], extends to internal disc derangement and remand to the hearing officer for her to decide the issue before her regarding internal disc disruption at L3-4.

MMI/IR

Given that we have reversed and remanded a portion of the extent-of-injury determination, we also reverse the hearing officer's determination that the claimant reached MMI on March 22, 2012, with a five percent. We remand the MMI and IR issues to the hearing officer to make a determination based on the evidence after she has determined whether the claimant's compensable injury extends to internal disc disruption at L3-4.

We note that the hearing officer adopted the certification of MMI and IR from Dr. T. In his narrative report, Dr. T identifies the injured area as the lumbar spine but did not specify the conditions of the lumbar spine he considered and rated. Additionally, we note that the designated doctor, [Dr. M] only listed the following diagnoses in his narrative report: lumbar sprain and lumbosacral neuritis.

SUMMARY

We affirm the hearing officer's determination that the claimant had disability resulting from the compensable injury of [date of injury], from August 10, 2012, through March 22, 2013.

We affirm that portion of the hearing officer's determination that the compensable injury extends to a disc bulge at L3-4.

We reverse that portion of the hearing officer's determination that the compensable injury of [date of injury], extends to internal disc derangement and remand to the hearing officer for her to decide the issue before her regarding internal disc disruption at L3-4.

We reverse the hearing officer's determination that the claimant reached MMI on March 22, 2012, with a five percent IR and remand the MMI/IR issues to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

The hearing officer is to make a determination whether the compensable injury of [date of injury], extends to internal disc disruption at L3-4. Based on the hearing officer's determination regarding the internal disc disruption at L3-4, the hearing officer is then to determine whether a certification of MMI and IR that rates the entire compensable injury is in evidence or whether a new certification of MMI and IR by the designated doctor is necessary.

Dr. M is the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for purposes of MMI and IR. We note that a different designated doctor was subsequently appointed to opine on the extent of the claimant's compensable injury. The hearing officer is to determine whether Dr. M is still qualified and available to be the designated doctor for MMI/IR. If Dr. M is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 28 TEX. ADMIN. CODE § 127.5(c) (Rule 127.5(c)) to determine MMI and the IR. If a new certification of MMI and IR is necessary, the hearing officer is to inform the designated doctor that the compensable injury of [date of injury], extends to a lumbar sprain/strain as previously stipulated to by the parties; a lumbar injury with radiculopathy as determined in a prior CCH; and a disc bulge at L3-4 and or internal disc disruption depending upon her determination on that issue as remanded.

The parties are to be provided with the hearing officer's letter to the designated doctor, if necessary, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is to make determinations which are supported by the evidence on extent of injury, MMI, and IR consistent with this decision.

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 Division, 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 **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge