

APPEAL NO. 140949
FILED JUNE 25, 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 March 5, 2014, with the record closing on March 31, 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 an injury to the left knee in the form of Grade I chondromalacia changes of the anterior and medial joint compartments of the left knee, an injury to the left ankle, altered gait, and the diagnosis of left leg muscle weakness; and (2) the appellant's (claimant) impairment rating (IR) is five percent.

The claimant appealed both of the hearing officer's determinations on a sufficiency of the evidence point of error. The claimant also contends that the hearing officer abused his discretion in denying the claimant's motion for continuance. The respondent (carrier) 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 prescribed in 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 in 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 that requires correction but does not affect the outcome of the hearing.

The parties stipulated that: (1) the claimant sustained a compensable injury on [date of injury]; (2) the carrier has accepted a left leg tibia/fibula fracture¹; and (3) the claimant reached maximum medical improvement (MMI) on March 18, 2013. The claimant testified, and medical records establish, that the claimant was injured when a pipe fell and struck his left leg.

¹ We note that the stipulation contained in Finding of Fact No. 1.E. does not specify the left leg; however, the parties stated at the CCH that it was in fact a left leg tibia/fibula fracture that was accepted by the carrier.

MOTION FOR CONTINUANCE

The claimant contends that the hearing officer abused his discretion in denying the claimant's motion for continuance for [Dr. L], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division), to submit his report regarding the extent of the compensable injury.

On July 15, 2013, the claimant submitted a Request for Designated Doctor Examination (DWC-32) on the issues of MMI and IR, and Dr. L was appointed on these issues. The record indicates that a Benefit Review Conference (BRC) was held on December 13, 2013, and continued on January 10, 2014, regarding the issues litigated at the March 5, 2014, CCH. On January 10, 2014, the claimant submitted a DWC-32 on the issue of the extent of the compensable injury, and Dr. L was appointed on this issue. The record indicates that Dr. L requested additional time to submit his extent of injury report due to the need for additional testing, and it was undisputed that the Division extended Dr. L's deadline to March 21, 2014. The claimant requested a motion for continuance to allow the admission of Dr. L's extent of injury report. The hearing officer denied the claimant's motion for continuance; however, the hearing officer informed the parties that he would keep the record open until the close of business on March 28, 2014, to allow the submission of Dr. L's extent of injury report. The hearing officer also informed the parties that he would admit any other report submitted by either party wishing to refute Dr. L's report.

Rulings on continuances are reviewed under an abuse-of-discretion standard and the Appeals Panel will not disturb the hearing officer's ruling on a continuance absent an abuse of discretion. *Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Under the circumstances of this case we find no abuse of discretion in the hearing officer's ruling denying the claimant's motion for continuance.

AMENDMENT OF EXTENT-OF-INJURY ISSUE

The extent-of-injury issue contained in the BRC Report lists the following conditions at issue: injuries to the left knee, left ankle, and/or the diagnosis of left leg muscle weakness. At the CCH the claimant requested the extent-of-injury issue be amended to include a more specific injury to the left knee in the form of Grade I chondromalacia changes of the anterior and medial joint compartments of the left knee, and an additional injury to the left ankle and left foot, as well as altered gait. The hearing officer stated on the record that he would amend the issue to include the specific conditions related to the knee, but he would not include the left foot and altered gait. Although the hearing officer's decision makes no reference to the left foot, the

hearing officer noted the condition of altered gait in the amended issue statement, and made a Finding of Fact, Conclusion of Law, and a Decision that the compensable injury does not extend to altered gait. The hearing officer exceeded the scope of the issue as amended during the CCH. Accordingly, we reform the hearing officer's decision by striking "altered gait" in the issue statement, and by striking that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to altered gait.

The hearing officer found in Finding of Fact No. 3 that the claimant "did not sustain an injury to his left knee . . . in the incident of [date of injury]." However, as discussed above the hearing officer amended the extent-of-injury issue statement from the general condition of "injuries to the left knee" to the more specific conditions of "an injury to the left knee in the form of Grade I chondromalacia changes of the anterior and medial joint compartments of the left knee." By amending the extent-of-injury issue to specific conditions, the hearing officer exceeded the scope of the issue as amended during the CCH in Finding of Fact No. 3. Accordingly, we reform the hearing officer's decision by striking that portion of Finding of Fact No. 3 that the claimant did not sustain an injury to his left knee in the incident of [date of injury].

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to an injury to the left knee in the form of Grade I chondromalacia changes of the anterior and medial joint compartments of the left knee, an injury to the left ankle, and the diagnosis of left leg muscle weakness is supported by sufficient evidence and is affirmed.

IR

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

SUMMARY

We reform the hearing officer's decision by striking "altered gait" in the issue statement, and by striking that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to altered gait as exceeding the scope of the issue as amended at the CCH.

We reform the hearing officer's decision by striking that portion of Finding of Fact No. 3 that the claimant did not sustain an injury to his left knee in the incident of [date of injury].

We affirm that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to an injury to the left knee in the form of Grade I chondromalacia changes of the anterior and medial joint compartments of the left knee, an injury to the left ankle, and the diagnosis of left leg muscle weakness.

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

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

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge