

APPEAL NO. 141030  
FILED JULY 10, 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 9, 2014, in Corpus Christi, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on [date of injury]; and (2) the claimant had disability resulting from an injury sustained on [date of injury], from October 4 through October 23, 2013.

The appellant (carrier) appealed, disputing the hearing officer's determinations of compensability and disability. The carrier states that the hearing officer mischaracterized the claimant's mechanism of injury as "indicated by the [h]earing [o]fficer in the discussion of her Decision and Order is wholly and totally incompatible with the testimony given by the claimant and all the other documentary evidence presented at the CCH." The appeal file does not contain a response from the claimant.

## DECISION

Reversed and remanded.

The claimant testified that he was employed as a delivery driver and his job consisted of delivering packages by loading and unloading packages from a truck. At the CCH the claimant testified that he injured his back lifting and carrying boxes throughout the day on [date of injury]. Also, claimant testified that he used a dolly to assist him in completing his job of delivering packages. In evidence is a Workers' Compensation-First Report of Injury or Illness (DWC-1) that describes the injury as the "employee states he was loading his dolly when he felt a pain in his lower back." The medical records in evidence describe the claimant's mechanism of injury as lifting boxes when he felt pain to his lower back.

The hearing officer's discussion in her decision describes the mechanism of injury as "jumping out of his delivery truck." As previously mentioned, the carrier appeals on the basis that the hearing officer's description of the mechanism of injury as jumping out of his delivery truck is not supported by the claimant's testimony or the documentary evidence. We agree that the hearing officer mischaracterized and misidentified the description of the claimant's mechanism of injury. In this case there is no evidence to support the hearing officer's description of the mechanism of injury as the claimant jumping out of his delivery truck, and the hearing officer's compensability and disability determinations are based on an incorrect description of the claimant's mechanism of injury. Because the hearing officer misstated the evidence in her discussion and based her determinations on such misstatement, we reverse the hearing officer's determinations that the claimant sustained a compensable injury on [date of injury], and that the claimant had disability resulting from the compensable injury of [date of injury], from October 4 through October 23, 2013, and we remand the compensability and disability issues to the hearing officer to make determinations consistent with the evidence.

## REMAND INSTRUCTIONS

On remand, the hearing officer is to make determinations on whether the claimant sustained a compensable injury on [date of injury]; and whether the claimant had disability resulting from an injury sustained on [date of injury], from October 4 through October 23, 2013, based on the correct mechanism of injury as supported by 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge