

APPEAL NO. 141040
FILED JULY, 7, 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 7, 2014, 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 moderately severe compromise of spinal canal at L4-5 representing spinal stenosis secondary to slight forward slippage of L4-5 and hypertrophy of ligamentum labra; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 31, 2013; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant has had disability from June 1, 2013, through the date of the CCH.

The claimant appealed the hearing officer's determination of the extent of the compensable injury, as well as the hearing officer's MMI and IR determinations, on a sufficiency of the evidence point of error. The respondent (self-insured) responded, urging affirmance of the hearing officer's determinations. The hearing officer's determination that the claimant has had disability from June 1, 2013, through the date of the CCH has not been appealed and has become final pursuant to Section 410.169.

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 is a case involving an error at the CCH that requires correction but does not affect the outcome of the hearing.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], that consisted of a lumbar sprain/strain, and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. P) as the designated doctor to determine the issues of MMI, IR, extent of injury, and ability to return to work. The claimant testified that she injured her back while cleaning a deep chest freezer.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to moderately severe compromise of spinal canal at L4-5 representing spinal stenosis secondary to slight forward slippage of L4-5 and hypertrophy of ligamentum labra is supported by sufficient evidence and is affirmed.

MMI/IR

The hearing officer determined that the claimant reached MMI on May 31, 2013, with a five percent IR as certified by Dr. P, the designated doctor.

Dr. P examined the claimant on August 7, 2013. In his narrative report, Dr. P opined that the extent of the claimant's injury was a lumbar sprain/strain. Using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), Dr. P assessed a five percent IR for the claimant's back. However, Dr. P placed the claimant in Diagnosis-Related Estimate (DRE) Thoracolumbar Category II: Minor Impairment for the lumbar spine condition. Page 3/95 of the AMA Guides provides that for purposes of the AMA Guides, the thoracic region may be considered to represent the thoracolumbar region, and the lumbar region may be considered to represent the lumbosacral region. See Appeals Panel Decision 051306-s, decided August 3, 2005. As discussed above, the hearing officer's determination that the compensable injury of [date of injury], does not extend to moderately severe compromise of spinal canal at L4-5 representing spinal stenosis secondary to slight forward slippage of L4-5 and hypertrophy of ligamentum labra has been affirmed. Also, as discussed above, the parties have stipulated that the compensable injury consists of a lumbar sprain/strain. No condition regarding the thoracic spine was litigated at the CCH, nor did the parties stipulate an injury to the thoracic spine was part of the compensable injury. Dr. P placed the claimant in the wrong DRE category. The hearing officer found in Finding of Fact No. 4 that the preponderance of the evidence is not contrary to Dr. P's report. The hearing officer's Finding of Fact No. 4 is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

There is only one other MMI/IR certification in evidence that rates the entire compensable injury of a lumbar sprain/strain. (Dr. K-R), the post-designated doctor required medical examination doctor, examined the claimant on February 5, 2014, and certified that the claimant reached MMI on May 31, 2013, with a five percent IR. In her narrative report, Dr. K-R noted a diagnosis of a lumbar sprain/strain, and placed the claimant in DRE Lumbosacral Category II: Minor Impairment for five percent impairment.

Because an MMI date of May 31, 2013, and an IR of five percent are supported by the evidence based on the report of Dr. K-R, rather than the report of Dr. P, the hearing officer's determination that the claimant reached MMI on May 31, 2013, with a five percent is affirmed but reformed as the claimant reached MMI on May 31, 2013, with a five percent IR per the report of Dr. K-R.

The true corporate name of the insurance carrier is **HOUSTON INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**TERRY B. GRIER, SUPERINTENDENT
4400 WEST 18TH STREET
HOUSTON, TEXAS 77092.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge