

APPEAL NO. 141078  
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 was held on January 14, 2014, and continued on April 8, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) sustained a compensable injury on [date of injury]; (2) the claimant did not have disability resulting from the compensable injury from July 12 through October 24, 2013; and (3) the compensable [date of injury], injury does not extend to a left knee medial meniscus tear. The claimant appealed, disputing the hearing officer's determinations of disability and extent of injury. The claimant contended in her appeal that the hearing officer's finding that she sustained damage or harm to the physical structure of her body in the form of a left knee sprain in the course of scope of employment on [date of injury], was in error because she was diagnosed with knee cartilage damage. Additionally, the claimant noted in her appeal that the hearing officer mistakenly stated in his discussion that she had knee surgery in July of 2013, but rather she actually had surgery on September 4, 2013, and again on October 9, 2013. The claimant argued in her appeal that she provided sufficient evidence to establish that the compensable injury of [date of injury], extended to a left knee medial meniscus tear. The respondent (carrier) responded, urging affirmance of the disputed disability and extent-of-injury determinations.

The hearing officer's determination that the claimant sustained a compensable injury on [date of injury], was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and remanded in part.

The claimant testified that she injured her knee while walking down the hall at work when a co-worker grabbed her from behind and twisted her and her knee popped.

**COMPENSABLE INJURY**

The hearing officer's determination that the claimant sustained a compensable injury on [date of injury], is supported by sufficient evidence and is affirmed.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable [date of injury], injury does not extend to a left knee medial meniscus tear is supported by sufficient evidence and is affirmed.

## **DISABILITY**

Disability means the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that she had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove that the compensable injury was the sole cause of her disability; only that it was a producing cause. APD 042097, *supra*.

In his discussion of the evidence the hearing officer noted the following:

Since it has been determined that the work injury does not include the condition for which the claimant underwent surgery in July 2013, the claimant did not sustain disability from July 12 through October 24, 2013, as a result of the [date of injury], injury.

A review of the record reflects that the claimant had a prior problem with her left knee and had two prior surgeries on December 9, 2008, and July 23, 2009, respectively, both prior to the date of injury in dispute. Since the date of injury, the claimant has had two surgeries on her left knee. On September 4, 2013, the claimant underwent a left knee partial medial meniscectomy and plica removal and on October 9, 2013, the claimant underwent left arthroscopic irrigation and debridement. The record does not reflect that the claimant underwent surgery in July of 2013 as stated by the hearing officer in his discussion.

The hearing officer misread one or more of the operative reports in evidence when he stated the claimant underwent surgery in July 2013. The hearing officer was mistaken about a material fact which he considered when determining the issue of disability. Accordingly, we reverse the hearing officer's determination that the claimant did not have disability resulting from the compensable injury from July 12 through October 24, 2013, and remand the disability issue to the hearing officer to make a determination of disability for the disputed period, July 12 through October 24, 2013, based on the evidence in the record before him.

## **SUMMARY**

We affirm the hearing officer's determination that the claimant sustained a compensable injury on [date of injury].

We affirm the hearing officer's determination that the compensable [date of injury], injury does not extend to a left knee medial meniscus tear.

We reverse the hearing officer's determination that the claimant did not have disability resulting from the compensable injury from July 12 through October 24, 2013, and remand the disability issue to the hearing officer.

## **REMAND INSTRUCTIONS**

We remand the disability issue to the hearing officer to make a determination of disability for the disputed period, July 12 through October 24, 2013, based on the evidence in the record.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** 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 78701-3232.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge