

APPEAL NO. 141258
FILED AUGUST 11, 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 December 2, 2013¹ and continued on May 6, 2014, in Dallas, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of [date of injury], does not extend to left shoulder adhesive capsulitis, left shoulder impingement disorder, or a left shoulder rotator cuff tear. The (appellant) claimant appealed, disputing the hearing officer's determination of the extent of the compensable injury. The claimant contends that the preponderance of the evidence was not contrary to the opinion of the designated doctor. The claimant also argues that it was error to admit the testimony of (Dr. S) because he did not provide a written report that was admitted into evidence. The claimant also argues on appeal that the "translator" provided for the CCH "interpreted very poorly and confused everyone." Respondent 1 (carrier) responded, urging affirmance of the disputed extent-of-injury determination. There is no response in the appeal file from either respondent 2 (subclaimant PC) or respondent 3 (subclaimant A).

DECISION

Reversed and remanded.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury. Although not included in the decision and order, a review of the record reflects that the parties additionally stipulated that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. B) as the designated doctor on the issue of the extent of the compensable injury. The claimant testified that he stepped on a nail while working and the wound became infected. As a result of the infection, the claimant had a partial amputation of his right leg below the knee on February 5, 2011. The claimant subsequently obtained a prosthesis but continues to use crutches to relieve leg pain. The claimant is alleging he sustained the disputed conditions to his left shoulder as a result of using the crutches.

The claimant argues on appeal that it was error to admit the testimony of Dr. S at the CCH; however, a review of the record does not reflect that any objection was made at the CCH by the claimant when Dr. S was called to testify. Consequently, the objection to the testimony of Dr. S was not preserved on appeal and will not be considered.

¹ We note the hearing officer's decision incorrectly refers to the first CCH setting was on December 2, 2014.

28 TEX. ADMIN. CODE § 140.2(a) (Rule 140.2(a)) provides that the Division on its own motion or upon request, will provide special accommodations to an individual who intends to participate in a proceeding and who does not speak English, or who has a physical, mental, or developmental handicap. Following the receipt of the claimant's appeal and the carrier's response, the Division's own translator provided a translation to the Appeals Panel of the CCH (which included the translation of the interpreter to the claimant). The file indicates that the CCH was recorded on one compact disc (CD) by the hearing officer. The CD recording and the Division's own translation were reviewed on appeal.

In his appeal, the claimant argues that the evidence at the CCH established that the compensable injury of [date of injury], extends to the conditions in dispute. However, the claimant alleges that the translator provided for the CCH interpreted very poorly and confused everyone, and that her dialect was considerably different from his causing additional communication barriers between them. The claimant notes in his appeal that the interpreter did not even know how to say the word "crutch" in Spanish.

A review of the record (including the CD record and the Division's own translation) reflects the court interpreter incorrectly translated from English into Spanish for the claimant various terms throughout the CCH including the terms crutches and the place where the claimant described he had fallen. There are also instances of other terminology at the CCH that the interpreter incorrectly translated. See Appeals Panel Decision (APD) 121193, decided August 17, 2012, but see *also* APD 111432, decided November 28, 2011. In some instances the interpreter used the Spanish word for cane rather than crutches. The errors in interpretation by the Division-appointed interpreter at the CCH in the instant case were directly related to the mechanism by which the claimant was alleging the extent conditions arose. Accordingly, we reverse the hearing officer's determination that the compensable injury does not extend to left shoulder adhesive capsulitis, left shoulder impingement disorder, or a left shoulder rotator cuff tear and remand the extent-of-injury issue to the hearing officer.

REMAND INSTRUCTIONS

On remand the hearing officer is to provide special accommodations to the claimant pursuant to Rule 140.2 and allow the claimant to provide testimony with the aid or a new interpreter. The hearing officer is to then decide whether the compensable injury of [date of injury], extends to left shoulder adhesive capsulitis, left shoulder impingement disorder, or a left shoulder rotator cuff tear based on the new proceedings and documentary 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 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge