

APPEAL NO. 141425  
FILED AUGUST 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 January 9, 2014, and continued on May 21, 2014, with the record closing on that date in Fort Worth, 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], extends to aggravation of bilateral hypertrophic facet disease with facet joint effusions at L4-5; (2) the compensable injury of [date of injury], does not extend to aggravation to L4-5 lumbar disc displacement, lumbar radiculitis, spondylolisthesis at L4-5, spinal stenosis at L4-5, and bilateral upper extremity radiculopathy; (3) the appellant (claimant) had disability resulting from the compensable injury, from January 22 through June 26, 2013; (4) the claimant reached maximum medical improvement (MMI) on April 16, 2012; and (5) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the hearing officer's determinations that the compensable injury does not extend to aggravation to L4-5 lumbar disc displacement, lumbar radiculitis, spondylolisthesis at L4-5, spinal stenosis at L4-5, and bilateral upper extremity radiculopathy; that the claimant reached MMI on April 16, 2012; and that the claimant's IR is five percent. The claimant argues that the hearing officer determined that the compensable injury did not include bilateral upper extremity radiculopathy but that was not a disputed issue. The claimant noted that the actual condition in dispute was bilateral lower extremity radiculopathy. The claimant contends in her appeal that the evidence was sufficient to support a determination that the compensable injury extends to aggravation to L4-5 lumbar disc displacement, lumbar radiculitis, spondylolisthesis at L4-5, spinal stenosis at L4-5, and bilateral lower extremity radiculopathy. Additionally, the claimant argues that the carrier never disputed any medical condition prior to the CCH and cannot now claim these conditions are in dispute. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

The hearing officer's determinations that the compensable injury of [date of injury], extends to aggravation of bilateral hypertrophic facet disease with facet joint effusions at L4-5 and that the claimant had disability resulting from the compensable injury from January 22 through June 26, 2013, were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that: (1) the claimant sustained a compensable injury on [date of injury]; (2) the carrier has accepted a lumbar sprain/strain as part of the compensable injury; and (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. L) as its designated doctor on the issues of extent of injury, MMI, and IR. The claimant testified that she injured her low back while carrying a water heater up a flight of stairs.

## **EXTENT OF INJURY**

The Benefit Review Conference Report listed the disputed extent-of-injury issue as follows: Does the compensable injury of [date of injury], extend to aggravation to L4-5 lumbar disc displacement and lumbar radiculitis? At the initial CCH setting held on January 9, 2014, the parties agreed to modify the extent-of-injury issue to add additional conditions that were in dispute. The agreed modified extent-of-injury issue at the January 9, 2014, CCH setting was: Does the compensable injury of [date of injury], extend to aggravation to L4-5 lumbar disc displacement, lumbar radiculitis, spondylolisthesis at L4-5, spinal stenosis at L4-5, and bilateral lower extremity radiculopathy? We note that a review of the record reflects the parties agreed to add the condition of bilateral lower extremity radiculopathy but the hearing officer mistakenly added the condition of bilateral upper extremity radiculopathy in the decision.

During the second CCH setting held on May 21, 2014, the parties again agreed to modify the extent-of-injury issue to add an additional condition of aggravation of bilateral hypertrophic facet disease with facet joint effusions at L4-5. We note that in the decision, the hearing officer again mistakenly listed the condition of bilateral upper extremity radiculopathy when identifying the complete extent-of-injury condition to be determined after the May 21, 2014, modification.

The hearing officer's determination that the compensable injury of [date of injury], does not extend to aggravation to L4-5 lumbar disc displacement, lumbar radiculitis, spondylolisthesis at L4-5, and spinal stenosis at L4-5 is supported by sufficient evidence and is affirmed.

As discussed above, the hearing officer mistakenly identified one of the disputed conditions in the extent-of-injury issue as bilateral upper extremity radiculopathy rather than bilateral lower extremity radiculopathy as agreed to by the parties. The hearing officer determined that the compensable injury of [date of injury], does not extend to bilateral upper extremity radiculopathy. We reverse the hearing officer's determination that the compensable injury of [date of injury], does not extend to bilateral upper extremity radiculopathy as exceeding the scope of the issue before him. The hearing officer failed to make any findings of fact, conclusions of law, or decision regarding whether the compensable injury of [date of injury], extends to bilateral lower extremity

radiculopathy. We reverse the hearing officer's extent-of-injury decision as being incomplete and remand the issue of whether the compensable injury of [date of injury], extends to bilateral lower extremity radiculopathy to the hearing officer to make a determination based on the evidence in the record.

### **MMI/IR**

The hearing officer determined that the claimant reached MMI on April 16, 2012, and that the claimant's IR is five percent. However, given that we have reversed the hearing officer's extent-of-injury determination as being incomplete because he failed to determine whether the compensable injury extends to bilateral lower extremity radiculopathy, we reverse the hearing officer's determinations that the claimant reached MMI on April 16, 2012, and that the claimant's IR is five percent and remand the MMI and IR issues to the hearing officer for further action consistent with this decision.

## **SUMMARY**

We affirm that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to aggravation to L4-5 lumbar disc displacement, lumbar radiculitis, spondylolisthesis at L4-5, and spinal stenosis at L4-5.

We reverse that portion of the hearing officer's extent-of-injury determination that the compensable injury of [date of injury], does not extend to bilateral upper extremity radiculopathy as exceeding the scope of the issue before him.

We reverse the hearing officer's extent-of-injury determination as being incomplete and remand the issue of whether the compensable injury of [date of injury], extends to bilateral lower extremity radiculopathy to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on April 16, 2012, and that the claimant's IR is five percent and remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

## **REMAND INSTRUCTIONS**

On remand the hearing officer is to decide whether the compensable injury of [date of injury], extends to bilateral lower extremity radiculopathy. After making a determination of whether the compensable injury of [date of injury], extends to bilateral lower extremity radiculopathy, the hearing officer is to then make a determination of MMI and IR for the entire compensable injury.

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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TWIN CITY FIRE 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