

APPEAL NO. 141633
FILED OCTOBER 2, 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 June 24, 2014, in Houston, 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], does not extend to medial and lateral meniscal tears of the right knee; (2) the appellant (claimant) has sustained no disability from May 24, 2013, through the date of the CCH; (3) the claimant reached maximum medical improvement (MMI) on May 23, 2013; (4) the claimant has a three percent impairment rating (IR).

The claimant appeals the hearing officer's extent-of-injury determination based on sufficiency of the evidence. Also, the claimant contends that the hearing officer should not have made a determination on disability, MMI, and IR issues because those issues were withdrawn by the parties at the CCH. The appeal file does not contain a response from the respondent (self-insured).

Affirmed in part, and reversed and rendered in part.

DECISION

The claimant testified that she slipped and fell at work injuring her right knee on [Date of Injury]. It is undisputed that the claimant sustained a right knee fracture.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to medial and lateral meniscal tears of the right knee is supported by sufficient evidence and is affirmed.

DISABILITY, MMI, AND IR

In addition to the issue regarding the extent of the compensable injury, the benefit review conference report also lists the issues of disability, MMI, and IR. At the CCH held on June 24, 2014, the parties agreed on the record to withdraw the disability, MMI, and IR issues and to proceed just on the extent-of-injury issue. The hearing officer agreed to do that. However, in the hearing officer's decision, disability, MMI, and IR are listed as disputed issues with no indication that they had been withdrawn, as agreed to by the parties, and the hearing officer made findings of fact, conclusions of law, and determinations on the withdrawn disability, MMI, and IR issues. The claimant

requests that we reverse the decision on disability, MMI, and IR because those issues were withdrawn at the CCH, and those issues were not actually litigated at the CCH. Because the record reflects that the parties withdrew the disability, MMI, and IR issues with the consent of the hearing officer, and those issues were not actually litigated by the parties at the CCH, we agree that the hearing officer should not have made a determination on the withdrawn disability, MMI, and IR issues.

Accordingly, we reverse the hearing officer's determination that the claimant has sustained no disability from May 24, 2013, through the date of the CCH, the claimant reached MMI on May 23, 2013, and the claimant's IR is three percent. We render a new decision that disability, MMI, and IR were not disputed issues before the hearing officer and therefore we strike Finding of Fact Nos. 6, 8, 9, 10, and Conclusion of Law Nos. 4, 5, 6, and that portion of the hearing officer's decision on the withdrawn disability, MMI, and IR issues.

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

**DR. WANDA BAMBERG, SUPERINTENDENT
14910 ALDINE WESTFIELD ROAD
HOUSTON, TEXAS 77032.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge