

APPEAL NO. 141833
FILED NOVEMBER 5, 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 July 21, 2014, 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 right shoulder rotator cuff tear, strain of the supraspinatus muscle, other joint derangement, and rotator cuff tear syndrome; (2) the compensable injury of [Date of Injury], does not extend to the strain of the subscapularis muscle; (3) the respondent (claimant) had disability resulting from June 6, 2013, through November 1, 2013, and from January 13, 2014, through the CCH, but not for the period of January 7, 2014, through January 12, 2014; (4) the claimant has not reached maximum medical improvement (MMI); and (5) since the claimant has not reached MMI, he cannot be assessed an impairment rating (IR) at this time.

The appellant (carrier) appealed those portions of the hearing officer's extent of injury and disability determinations that were favorable to the claimant. The carrier also appealed the hearing officer's MMI and IR determinations. With regard to the hearing officer's extent-of-injury determination, the carrier states that the hearing officer erred by making a determination on a condition that was not listed in the Statement of Disputes, considering evidence not in the record, and relying on a letter of causation that was legally insufficient to support a finding of causation. The appeal file does not contain a response from the claimant.

The hearing officer's determinations that the compensable injury of [Date of Injury], does not extend to the strain of the subscapularis muscle, and the claimant did not have disability for the period of January 7, 2014, through January 12, 2014, have not been appealed and have 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 case is a situation that requires correction but does not affect the outcome of the hearing.

The parties stipulated that: (1) on [Date of Injury], the claimant sustained a compensable injury; (2) (Dr. B) is the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor to address MMI, IR, extent of injury and disability; and (3) the claimant's accepted compensable injuries are bilateral shoulder sprains/strains. The claimant testified, and the medical records establish, that the claimant injured his right and left shoulders while picking up a box of struts at work on [Date of Injury].

EXTENT OF INJURY

The extent-of-injury issue contained in the Benefit Review Conference Report lists the following condition at issue: right shoulder rotator cuff tear. At the CCH the claimant requested the extent-of-injury issue be amended to include the additional conditions listed in the Designated Doctor Examination Data Report (DWC-68) by Dr. B, the designated doctor, which were: strain of the supraspinatus muscle, strain of the subscapularis muscle, and other joint derangement. The hearing officer stated on the record that he would amend the issue to include: right shoulder rotator cuff tear, strain of the supraspinatus muscle, strain of the subscapularis muscle, and other joint derangement.

That portion of the hearing officer's determination that the compensable injury of [Date of Injury], extends to right shoulder rotator cuff tear, strain of the supraspinatus muscle, and other joint derangement is supported by sufficient evidence and is affirmed.

The hearing officer also determined that the compensable injury of [Date of Injury], extends to rotator cuff tear syndrome.

Review of the record reflects that at the CCH the parties did not reference or agree to add the condition of rotator cuff tear syndrome to the extent-of-injury conditions in dispute. We note (Dr. W) referenced in both his medical report dated January 29, 2014, and a letter of causation dated March 27, 2014, the condition of "Rotator Cuff Syndrome" as a diagnosis; however, the parties did not litigate whether the compensable injury of [Date of Injury], extends to rotator cuff tear syndrome. On appeal the carrier states that the condition of rotator cuff tear syndrome was not a condition agreed by the parties as an extent-of-injury condition in dispute nor was it actually litigated by the parties. We agree. In this case the hearing officer exceeded the scope of the issue by determining that the compensable injury of [Date of Injury], extends to rotator cuff tear syndrome. Accordingly, we reform the hearing officer's decision by striking "rotator cuff tear syndrome" in the issue statement, discussion, decision and

order, and by striking that portion of the hearing officer's Finding of Fact No. 3, and Conclusion of Law No. 3, that the compensable injury of [Date of Injury], extends to rotator cuff tear syndrome.

DISABILITY, MMI, AND IR

The hearing officer's determination that the claimant had disability resulting from the [Date of Injury], compensable injury from June 6, 2013, through November 1, 2013, and from January 13, 2014, through the CCH is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the claimant has not reached MMI, and since the claimant has not reached MMI, he cannot be assessed an IR at this time, is supported by sufficient evidence and is affirmed.

SUMMARY

We reform the hearing officer's decision by striking "rotator cuff tear syndrome" in the issue statement, discussion, decision and order and by striking that portion of the hearing officer's Finding of Fact No. 3, and Conclusion of Law No. 3, that the compensable injury of [Date of Injury], extends to rotator cuff tear syndrome.

We affirm that portion of the hearing officer's determination that the compensable injury of [Date of Injury], extends to right shoulder rotator cuff tear, strain of the supraspinatus muscle, and other joint derangement.

We affirm the hearing officer's determination that the claimant had disability resulting from the [Date of Injury], compensable injury from June 6, 2013, through November 1, 2013, and from January 13, 2014, through the CCH.

We affirm the hearing officer's determination that the claimant has not reached MMI, and since the claimant has not reached MMI, he cannot be assessed an IR at this time.

The true corporate name of the insurance carrier is **ACCIDENT FUND GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge