

APPEAL NO. 141958  
FILED NOVEMBER 24, 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 August 4, 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], extends to a lumbar disc herniation at L5-S1 and lumbar radiculopathy, and that the respondent (claimant) sustained disability from the compensable injury from September 9, 2013, through the date of the CCH.

The appellant (carrier) appealed the hearing officer's extent of injury and disability determinations contending that the hearing officer erred in her determinations. Furthermore, the carrier contends that based on the claimant's testimony the hearing officer's disability determination is not supported by the evidence. The appeal file does not contain a response from the claimant.

## **DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated that: the claimant sustained a compensable injury on [Date of Injury], and the carrier accepted liability for a lumbar sprain/strain. The claimant testified that he sustained a lumbar injury while transferring a patient by pulling a patient onto a bed on [Date of Injury].

## **EXTENT OF INJURY**

The hearing officer's extent-of-injury determination that the claimant's compensable injury of [Date of Injury], extends to a lumbar disc herniation at L5-S1 and lumbar radiculopathy is supported by sufficient evidence and is affirmed.

## **DISABILITY**

Disability is an economic concept defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. The hearing officer determined that the claimant has had disability resulting from the compensable injury of [Date of Injury], from September 9, 2013, through the date of the CCH, August 4, 2014.

Whether the claimant had disability, and if so for what period, was a question of fact for the hearing officer to resolve. The claimant testified that he resigned from his pre-injury job and he worked until September 9, 2013. The hearing officer states in her decision that the claimant resigned from his job because he was continuing to suffer from lower back pain, and he was hoping that with rest and time, his condition would improve. The evidence supports the hearing officer's determination that the claimant had disability for the period beginning September 9, 2013, through March 2, 2014.

However, the claimant testified that he began a new job on March 3, 2014, at a higher pay than his pre-injury job. In evidence is Carrier's Interrogatories to Claimant, Carrier's Exhibit D, page 7, in which the claimant stated he began working for a new employer earning more than his pre-injury wage. Furthermore, although the parties initially agreed that the disability period in dispute was from September 9, 2013, through the date of the CCH, after the claimant's testimony and evidence was presented, the claimant stated during closing argument that he had disability for the period from September 9, 2013, through March 2, 2014.

That portion of the hearing officer's determination that the claimant had disability resulting from the compensable injury of [Date of Injury], from September 9, 2013, through March 2, 2014, is supported by sufficient evidence and is affirmed.

That portion of the hearing officer's determination that the claimant had disability resulting from the compensable injury of [Date of Injury], from March 3, 2014, through the date of the CCH, August 4, 2014, is against the great weight and preponderance of the evidence. Based on the claimant's testimony, evidence presented, and the period of disability claimed at the CCH, the claimant did not have disability from March 3, 2014, through the date of the CCH, August 4, 2014, as defined in Section 401.011(16). Accordingly, we reverse that portion of the hearing officer's determination that the claimant had disability resulting from the compensable injury of [Date of Injury], from March 3, 2014, through the date of the CCH, August 4, 2014, and we render a new decision that the claimant did not have disability resulting from the compensable injury of [Date of Injury], from March 3, 2014, through the date of the CCH, August 4, 2014.

### **SUMMARY**

We affirm the hearing officer's extent-of-injury determination that the claimant's compensable injury of [Date of Injury], extends to a lumbar disc herniation at L5-S1 and lumbar radiculopathy.

We affirm that portion of the hearing officer's determination that the claimant had disability resulting from the compensable injury of [Date of Injury], from September 9, 2013, through March 2, 2014.

We reverse that portion of the hearing officer's determination that the claimant had disability resulting from the compensable injury of [Date of Injury], from March 3, 2014, through the date of the CCH, August 4, 2014, and we render a new decision that the claimant did not have disability resulting from the compensable injury of [Date of Injury], from March 3, 2014, through the date of the CCH, August 4, 2014.

The true corporate name of the insurance carrier is **AMERICAN ZURICH 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 78701-3218.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge