

APPEAL NO. 150072  
FILED MARCH 4, 2015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 25, 2014, in Lubbock, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury includes left foot plantar mass in the mid foot region consistent with rocker bottom deformity with dislocation of all the tarsometatarsal joints and charcot disease of the left foot, but does not include left charcot foot with diabetic plantar wound and cellulitis, left foot charcot neuroarthropathy, collapse of the left plantar arch, diabetes and peripheral neuropathy, chronic left foot plantar fasciitis with heel spur, anterior talofibular ligament tear of the left foot, tear of the left posterior tibial tendon, chronic left foot Achilles tendonitis, small partial tear of the left medial band, and osteomyelitis and stress fractures of the left foot; (2) the respondent (claimant) has not reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI, an impairment rating (IR) cannot yet be assigned; and (4) the claimant had disability resulting from the compensable injury from [Date of Injury], through January 12, 2014. The appellant (carrier) appealed that portion of the hearing officer's extent-of-injury determination that was in favor of the claimant, contending that the hearing officer's determination is contradictory and the conditions found compensable were the result of a pre-existing condition. The carrier further appeals the hearing officer's determinations that the claimant has disability for the period at issue, that the claimant has not reached MMI, and an IR cannot yet be assigned. The claimant responded, urging affirmance of the disputed determinations.

The hearing officer's determination that the compensable injury does not extend to left charcot foot with diabetic plantar wound and cellulitis, left foot charcot neuroarthropathy, collapse of the left plantar arch, diabetes and peripheral neuropathy, chronic left foot plantar fasciitis with heel spur, anterior talofibular ligament tear of the left foot, tear of the left posterior tibial tendon, chronic left foot Achilles tendonitis, small partial tear of the left medial band, and osteomyelitis and stress fractures of the left foot was not appealed and has become final pursuant to Section 410.169.

## DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on [Date Of injury], the claimant sustained a compensable injury. The claimant testified that he injured his left foot and ankle while working as a security guard. The claimant testified that his foot slipped on uneven, wet pavement, causing it to twist and pop.

## EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [Date Of Injury], includes left foot plantar mass in the mid foot region consistent with rocker bottom deformity with dislocation of all the tarsometatarsal joints and charcot disease of the left foot is supported by sufficient evidence and is affirmed.

## MMI/IR

The hearing officer's determinations that the claimant has not reached MMI and because the claimant has not reached MMI, an IR cannot yet be assigned are supported by sufficient evidence and are affirmed.

## DISABILITY

Disability means the inability to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that he had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove that the compensable injury was the sole cause of his disability; only that it was a producing cause. APD 042097, *supra*.

The hearing officer determined that the claimant sustained disability from the compensable injury from [Date of Injury], through January 12, 2014. The claimant testified that he was unable to work during this period because he was admitted into the hospital and had surgery to his left foot. The medical records in evidence indicate that the claimant was admitted to the hospital on December 29, 2013, with an admission diagnosis of a "[l]eft charcot foot with diabetic plantar wound and cellulitis." An admission note of that date explains that "the [claimant] came to the emergency department room and was found to have plantar wound with cellulitis and leukocytosis. For that reason, the [claimant] was admitted under [Dr. R] services where we will continue to monitor and follow." An operative report dated [Date of Injury], indicates that the claimant underwent an irrigation and debridement to two areas of the plantar surface of the left foot. The pre-operative and post-operative diagnoses were an infection to the left foot, diabetes with neurologic impairment, charcot neuroarthropathy of the left foot, and diabetic foot ulcer in two places on the left foot. The medical records further indicate that the claimant was discharged from the hospital on January 2, 2014, and the claimant testified that he continued to receive wound care following his discharge.

The evidence established that the claimant was unable to work from [Date of Injury], through January 12, 2014, the period in dispute, because of the surgical procedure to his left foot on [Date of Injury]. As noted above, that surgical procedure was for the specific diagnoses of an infection to the left foot, diabetes with neurologic impairment, charcot neuroarthropathy of the left foot, and diabetic foot ulcer in two places on the left foot. As indicated above, the hearing officer's determination that the compensable injury does not include left charcot foot with diabetic plantar wound and cellulitis, left foot charcot neuroarthropathy, and diabetes and peripheral neuropathy was not appealed and has become final. Additionally, although we have affirmed the hearing officer's determination that the compensable injury includes left foot plantar mass in the mid foot region consistent with rocker bottom deformity with dislocation of all the tarsometatarsal joints and charcot disease of the left foot, the operative report does not contain the specific diagnoses of left foot plantar mass in the mid foot region consistent with rocker bottom deformity with dislocation of all the tarsometatarsal joints and charcot disease of the left foot. Therefore, since the claimant's inability to work during the period of [Date of Injury], through January 12, 2014, was not due to the compensable injury, the hearing officer's determination that the claimant sustained disability from the compensable injury from [Date of Injury], through January 12, 2014, is reversed. We render a new decision that the claimant did not have disability resulting from the compensable injury from [Date of Injury], through January 12, 2014.

#### SUMMARY

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], includes left foot plantar mass in the mid foot region consistent with rocker bottom deformity with dislocation of all the tarsometatarsal joints and charcot disease of the left foot.

We affirm the hearing officer's determinations that the claimant has not reached MMI and because the claimant has not reached MMI, an IR cannot yet be assigned.

We reverse the hearing officer's determination that the claimant sustained disability from the compensable injury from [Date of Injury], through January 12, 2014, and we render a new decision that the claimant did not have disability resulting from the compensable injury from [Date of Injury], through January 12, 2014.

The true corporate name of the insurance carrier is **ARCH 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.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge