

APPEAL NO. 150180
FILED MARCH 24, 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 December 10, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the compensable injury of [Date of Injury], extends to grade I retrolisthesis of L5 related to S1, L5-S1 disc protrusion, contact of S1 nerve root in the lateral recess, HNP at L5-S1, lumbar radiculopathy, and lumbar disc displacement with intervertebral disc without myelopathy.

The appellant (carrier) appealed the hearing officer's determination, contending that the evidence was insufficient to establish causation between the compensable injury and the disputed conditions. The appeal file does not contain a response from the respondent (claimant).

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated in part that: the claimant sustained a compensable injury on [Date of Injury]; the carrier accepted liability for a lumbar sprain/strain; (Dr. R) was the first designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine the extent of the claimant's compensable injury; and (Dr. S) was the second designated doctor appointed by the Division to determine the extent of the claimant's compensable injury. The claimant testified that he injured his back while helping guide a 150 to 200 pound air conditioner unit onto the roof of an apartment. The claimant testified that the ropes holding the unit came loose and he had to hold the unit by himself on a ladder for approximately one to two minutes to keep it from falling.

The hearing officer's determination that the compensable injury of [Date of Injury], extends to grade I retrolisthesis of L5 related to S1, L5-S1 disc protrusion, contact of S1 nerve root in the lateral recess, HNP at L5-S1, and lumbar radiculopathy are supported by sufficient evidence and are affirmed.

The hearing officer also determined that the compensable injury extends to lumbar disc displacement with intervertebral disc without myelopathy.

In evidence is a Request for Designated Doctor Examination (DWC-32) from the carrier dated September 10, 2013. The carrier requested a designated doctor to determine whether the compensable injury extended to grade I retrolisthesis of L5 related to S1 with degenerative disc disease and 2mm disc protrusion, contact of S1 nerve root in the lateral recess, HNP at L5-S1, and radiculopathy. Dr. R was appointed to opine on the extent-of-injury issue. Dr. R examined the claimant on October 7, 2013, and opined that the compensable injury extended to "[g]rade I retrolisthesis of L5 related to S1 with degenerative disc disease and 2mm disc protrusion, contact of S1 nerve root in the lateral recess, HNP L5-S1 and radiculopathy." We note that Dr. R did not discuss the condition of lumbar disc displacement with intervertebral disc without myelopathy.

In a response to a letter of clarification dated July 25, 2014, Dr. R again opined that the compensable injury extended to the disputed conditions of grade I retrolisthesis of L5 related to S1 with degenerative disc disease and 2mm disc protrusion, contact of S1 nerve root in the lateral recess, HNP at L5-S1, and radiculopathy. We note that Dr. R did not discuss the condition of lumbar disc displacement with intervertebral disc without myelopathy.

In evidence is a DWC-32 from the claimant dated October 22, 2014. The claimant requested a designated doctor to determine whether the compensable injury extended to lumbar displacement of intervertebral disc without myelopathy, lumbago, lumbar stenosis, and grade 4 or grade 5 annular tear at L5-S1. Dr. S was appointed to opine on this issue. Dr. S examined the claimant on November 13, 2014, and opined that the compensable injury “is a lumbar sprain only” and that “the disputed injuries are not compensable.”

The hearing officer stated in the Discussion portion of the decision and order that Dr. R examined the claimant on October 7, 2013, to determine the extent of the claimant’s compensable injury, and that Dr. R opined that the compensable injury extends to lumbar disc displacement with intervertebral disc without myelopathy. However, as noted above, Dr. R did not discuss a diagnosis of intervertebral disc without myelopathy in either his October 7, 2013, or July 25, 2014, extent-of-injury reports, nor was Dr. R asked to address that condition. Dr. S, the second designated doctor appointed to determine the extent of the compensable injury, was asked specifically to determine whether the compensable injury extends to lumbar disc displacement with intervertebral disc without myelopathy. Dr. S opined that the compensable injury does not extend to lumbar disc displacement with intervertebral disc without myelopathy. We note that although the evidence shows that the claimant was diagnosed with lumbar disc displacement with intervertebral disc without myelopathy, Dr. S’ opinion is the only opinion in evidence that specifically discusses this condition.

In Appeals Panel Decision (APD) 130723, decided May 6, 2013, and APD 142523, decided January 26, 2015, the Appeals Panel reversed the hearing officer’s extent-of-injury determinations because the hearing officer had misread the causation letter in evidence. Although the hearing officer in this case could accept or reject in whole or in part the opinion of Dr. R, or any other evidence, the hearing officer misread Dr. R’s extent-of-injury opinions regarding lumbar disc displacement with intervertebral disc without myelopathy. Accordingly, we reverse that portion of the hearing officer’s determination that the compensable injury of [Date of Injury], extends to lumbar disc displacement with intervertebral disc without myelopathy, and we remand the issue of whether the compensable injury of [Date of Injury], extends to lumbar disc displacement with intervertebral disc without myelopathy for further action consistent with this decision.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury of [Date of Injury], extends to grade I retrolisthesis of L5 related to S1, L5-S1 disc protrusion, contact of S1 nerve root in the lateral recess, HNP at L5-S1, and lumbar radiculopathy.

We reverse the hearing officer's determination that the compensable injury of [Date of Injury], extends to lumbar disc displacement with intervertebral disc without myelopathy, and we remand the issue of whether the compensable injury of [Date of Injury], extends to lumbar disc displacement with intervertebral disc without myelopathy.

REMAND INSTRUCTIONS

The hearing officer is to make a determination whether the compensable injury of [Date of Injury], extends to lumbar disc displacement with intervertebral disc without myelopathy considering the evidence in the record. No new evidence is to be taken.

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 APD 060721, decided June 12, 2006.

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

**RICHARD GERGASKO, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge