

APPEAL NO. 150300
MARCH 27, 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 (CCH) was held on January 15, 2015, 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 an L1-2 herniation, L4-5 herniation, or lumbar radiculopathy; (2) the date of maximum medical improvement (MMI) is August 28, 2014; (3) the impairment rating (IR) is five percent; and (4) the appellant (claimant) did not have disability from August 29, 2014, to the present resulting from an injury sustained on [Date of Injury].

The claimant appealed all of the hearing officer's determinations on a sufficiency of the evidence point of error. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed as reformed.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], which includes rib contusions, a lumbar sprain/strain, and a coccyx contusion. The claimant testified she was injured when the cement truck in which she was a passenger rolled over onto its side and left her hanging from her seatbelt in the passenger seat.

EXTENT OF INJURY, MMI, AND IR

The hearing officer's determination that the compensable injury of [Date of Injury], does not extend to an L1-2 herniation, L4-5 herniation, or lumbar radiculopathy is supported by sufficient evidence and is affirmed.

The hearing officer's determinations that the date of MMI is August 28, 2014, and that the IR is five percent are supported by sufficient evidence and are affirmed.

DISABILITY

The disability issue certified on the Benefit Review Conference (BRC) report is "[d]id the [c]laimant have disability from [d] August 29, 2014, to the present resulting from an injury sustained on [Date of Injury]?" The parties agreed to the issue as certified on the BRC report. The hearing officer determined that the claimant did not have disability from August 29, 2014, to the present resulting from an injury sustained on [Date of

Injury]. The hearing officer's determination is supported by sufficient evidence and is affirmed. Although the hearing officer noted the correct disability period at issue in Conclusion of Law No. 6 and in the decision, Finding of Fact No. 5 reads as follows:

The claimant was not unable to obtain and retain employment at wages equivalent to her pre-injury wage as a result of the [Date of Injury], compensable injury.

As noted above, the specific period of disability at issue was August 29, 2014, through the date of the CCH. Any period prior to August 29, 2014, or after the date of the CCH was not at issue before the hearing officer; the parties did not actually litigate disability prior to August 29, 2014, or after the date of the CCH, nor did the parties stipulate to disability prior to August 29, 2014, or after the date of the CCH. Finding of Fact No. 5 exceeds the scope of the issue before the hearing officer. Accordingly, we reform Finding of Fact No. 5 as follows to conform with the evidence and the hearing officer's Conclusion of Law No. 6 and decision:

The claimant was not unable to obtain and retain employment at wages equivalent to her pre-injury wage beginning August 29, 2014, and continuing through the present as a result of the [Date of Injury], compensable injury.

The true corporate name of the insurance carrier is **ACE AMERICAN 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge