

APPEAL NO. 150371
FILED APRIL 23, 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 20, 2015, in Austin, 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 a tear of the posterior horn of the medial meniscus of the right knee; (2) the date of maximum medical improvement (MMI) is November 4, 2013; and (3) the impairment rating (IR) is one percent.

The appellant (claimant) appealed all of the hearing officer's determinations. The claimant contends that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], and that the carrier has accepted as compensable a right knee medial meniscus tear. The claimant testified she felt a twisting or a popping in her right knee as she walked up an incline at work.

EXTENT OF INJURY

The extent-of-injury issue reported out of the benefit review conference and as agreed to by the parties at the CCH was whether the compensable injury of [Date of Injury], extends to a tear of the posterior horn of the medial meniscus of the right knee. However, the actual extent-of-injury issue argued by the parties at the CCH was whether the compensable injury extends to a tear of the posterior horn of the medial meniscus of the right knee after June 12, 2013, the date the claimant underwent partial medial meniscectomy of the posterior horn of the medial meniscus of the right knee.

As noted above, the parties stipulated that the carrier has accepted a right knee medial meniscus tear. In evidence is an MRI dated April 9, 2013, which notes an impression of a radial/undersurface tear posteromedial corner medial meniscus. Also in evidence is an operative report dated June 12, 2013, which reveals that the claimant underwent a partial medial meniscectomy for “a complex multiradiate tear of the posterior horn of the medial meniscus.” The operative report noted that “[t]he remaining meniscus was smooth and stable to probing.” Also in evidence is a postoperative MRI dated December 30, 2013, which notes that “[t]he tear of the posterior horn of the medial meniscus is not as prominent but is visualized.” We note that (Dr. M) was appointed by the Texas Department of Insurance, Division of Workers’ Compensation (Division) to determine whether a “[r]ecurrent/new tear of the medial meniscus [is] associated with the date of injury.” It is undisputed that the tear is in the same location as the pre-surgical MRI, which is the posterior horn of the medial meniscus.

At the CCH the parties made clear that the dispute in this case was whether the compensable injury extends to a tear of the posterior horn of the medial meniscus of the right knee after the June 12, 2013, surgery. There was no argument made by either party regarding any other medial meniscus tear, and the carrier has accepted a right knee medial meniscus tear. Therefore, we reverse the hearing officer’s determination that the compensable injury of [Date of Injury], does not extend to a tear of the posterior horn of the medial meniscus of the right knee, and we remand this case to the hearing officer to determine whether the compensable injury of [Date of Injury], extends to a tear of the posterior horn of the medial meniscus of the right knee after June 12, 2013.

MMI/IR

The Appeals Panel has held that an extent-of-injury issue is a threshold issue that must be resolved before MMI and IR can be resolved, and that the resolution of the MMI and IR issues will flow from the resolution of the extent issue. See Appeals Panel Decision (APD) 110854, decided August 15, 2011; see *also* APD 120180, decided April 2, 2012. Since we have reversed the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to a tear of the posterior horn of the medial meniscus of the right knee and remanded this case for the hearing officer to determine whether the compensable injury of [Date of Injury], extends to a tear of the posterior horn of the medial meniscus of the right knee after June 12, 2013, we also reverse the hearing officer's determinations that the date of MMI is November 4, 2013, and the IR is one percent, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to determine whether the compensable injury of [Date of Injury], extends to a tear of the posterior horn of the medial meniscus of the right knee after June 12, 2013. The hearing officer is then to determine the claimant's date of MMI and IR.

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 **STANDARD FIRE 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge

