

APPEAL NO. 150460
FILED APRIL 10, 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 30, 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 aggravation of the lumbar herniated discs from L2 through L5; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 23, 2014; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant did not have disability resulting from the compensable injury of [Date of Injury], from August 28, 2014, through the date of the CCH.

The claimant appealed, disputing the hearing officer's determinations of the extent of injury, MMI, IR, and disability. The claimant argues that the preponderance of the evidence is contrary to the certification of MMI/IR of the designated doctor; that the evidence established the compensable injury extends to the disputed conditions; and that the claimant had disability for the time period in dispute. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but does not affect the outcome of the hearing. This is a case involving an error at the CCH that requires correction but does not affect the outcome of the hearing.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury]; the carrier accepted liability for a cervical sprain/strain and a lumbar sprain/strain; and (Dr. A) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to opine on MMI, IR, and the extent of the claimant's compensable injury. The claimant testified that he felt pain in his back while lifting crates in the course and scope of his employment.

EXTENT OF INJURY

The parties agreed at the CCH that the disputed extent of injury was: Does the compensable injury of [Date of Injury], extend to aggravation of the lumbar herniated discs from L2 through L5? The hearing officer found that the compensable injury event of [Date of Injury], did not enhance, accelerate, or worsen the lumbar herniated discs from L2 through L5. That finding is supported by the evidence. The hearing officer determined that the compensable injury of [Date of Injury], does not extend to aggravation of the lumbar herniated discs from L2 through L5. That determination is supported by the evidence. However, in Conclusion of Law No. 5 the hearing officer determined that the compensable injury of [Date of Injury], does not extend to aggravation of the lumbar herniated discs from L3 through L5. We reform Conclusion of Law No. 5 to state that the compensable injury of [Date of Injury], does not extend to aggravation of the lumbar herniated discs from L2 through L5 to conform to the evidence, the finding of fact, and the decision.

MMI/IR

The hearing officer's determination that the claimant reached MMI on August 23, 2014, and that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue in dispute was as follows: Did the claimant have disability resulting from the compensable injury of [Date of Injury], from August 24, 2014, through the CCH? The hearing officer found in Finding of Fact No. 6 that the claimant was not unable to obtain or retain employment at wages equivalent to his pre-injury wages from August 24, 2014, through the date of the CCH as a result of the compensable injury of [Date of Injury]. That finding is supported by sufficient evidence. However, in both Conclusion of Law No. 6 and the decision the hearing officer determined that the claimant did not have disability resulting from the compensable injury of [Date of Injury], from August 28, 2014, through the date of the CCH. We reform Conclusion of Law No. 6 and the decision to state that the claimant did not have disability resulting from the compensable injury of [Date of Injury], from August 24, 2014, through the date of the CCH to conform to Finding of Fact No. 6 and the evidence.

The hearing officer's determination that the claimant did not have disability resulting from the compensable injury of [Date of Injury], from August 24, 2014, through the date of the CCH is supported by sufficient evidence and is affirmed as reformed.

SUMMARY

We affirm as reformed the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to aggravation of the lumbar herniated discs from L2 through L5.

We affirm the hearing officer's determination that the claimant reached MMI on August 23, 2014.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

We affirm the hearing officer's determination that the claimant did not have disability resulting from the compensable injury of [Date of Injury], from August 24, 2014, through the date of the CCH as reformed.

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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge