

APPEAL NO. 150498
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 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 major neuro-cognitive disorder due to traumatic brain injury, post-traumatic stress disorder (PTSD), chronic pain syndrome, aggravation of pre-existing cervical disc degeneration, C2-3 hypertrophy with neuroforaminal narrowing with abutment of the exiting left C3 nerve root, C3-4 hypertrophy and bilateral arthropathy with neuroforaminal narrowing with abutment of the exiting left C5 nerve root, C5-6 hypertrophy resulting in bilateral neuroforaminal narrowing with abutment of both exiting C6 nerve roots, aggravation of pre-existing lumbar disc degeneration, and L5-S1 disc protrusion/herniation with abutment of the left S1 nerve root; (2) the date of maximum medical improvement (MMI) is April 12, 2014; (3) the impairment rating (IR) is zero percent; and (4) the appellant (claimant) did not have disability from April 11, 2014, through the present resulting from the [Date of Injury], compensable injury.

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, IR, and disability. The claimant contends that he provided expert evidence to establish the conditions in dispute were part of the compensable injury. The claimant further contends that the report of the designated doctor lacks credibility and should not be given presumptive weight. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, IR, and disability determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], which included at least cervicalgia, muscle spasm, lumbago, headache, two left rib fractures, memory loss, and post-concussive syndrome. The claimant testified that he was injured when he was knocked off a ladder when he was drilling and hit an electrical conduit.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to major neuro-cognitive disorder due to traumatic brain injury, PTSD, chronic pain

syndrome, aggravation of pre-existing cervical disc degeneration, C2-3 hypertrophy with neuroforaminal narrowing with abutment of the exiting left C3 nerve root, C3-4 hypertrophy and bilateral arthropathy with neuroforaminal narrowing with abutment of the exiting left C5 nerve root, C5-6 hypertrophy resulting in bilateral neuroforaminal narrowing with abutment of both exiting C6 nerve roots, aggravation of pre-existing lumbar disc degeneration, and L5-S1 disc protrusion/herniation with abutment of the left S1 nerve root is supported by sufficient evidence and is affirmed.

MMI/IR

The hearing officer's determination that the claimant reached MMI on April 12, 2014, with a zero percent IR is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue reported out of the Benefit Review Conference Report was stated as follows: Did the claimant have disability from April 13, 2012, through the present resulting from the [Date of Injury], compensable injury? At the CCH, the parties agreed to revise the issue as follows: Did the claimant have disability from April 12, 2014, through the present resulting from the [Date of Injury], compensable injury? The hearing officer mistakenly revised the issue to reflect the beginning date of the disability period in dispute as April 11, 2014, rather than April 12, 2014, as agreed to by the parties. The hearing officer found that the claimant's inability, if any, to obtain and retain employment at wages equivalent to his pre-injury wage beginning on April 11, 2014, and continuing through the date of the CCH is not a result of the compensable injury on [Date of Injury]. The conclusion of law and decision also address April 11, 2014, rather than April 12, 2014, as agreed by the parties.

The hearing officer failed to modify the disability issue as agreed to by the parties. Accordingly, we reform the hearing officer's decision to reflect that the only period of disability at issue before the hearing officer was April 12, 2014, through the date of the CCH. We reverse that portion of the hearing officer's determination that the claimant did not have disability on April 11, 2014, as exceeding the scope of the agreed issue before him. That portion of the hearing officer's determination that the claimant did not have disability from April 12, 2014, through the date of the CCH is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's determination that the compensable injury does not extend to major neuro-cognitive disorder due to traumatic brain injury, PTSD, chronic pain syndrome, aggravation of pre-existing cervical disc degeneration, C2-3

hypertrophy with neuroforaminal narrowing with abutment of the exiting left C3 nerve root, C3-4 hypertrophy and bilateral arthropathy with neuroforaminal narrowing with abutment of the exiting left C5 nerve root, C5-6 hypertrophy resulting in bilateral neuroforaminal narrowing with abutment of both exiting C6 nerve roots, aggravation of pre-existing lumbar disc degeneration, and L5-S1 disc protrusion/herniation with abutment of the left S1 nerve root.

We affirm the hearing officer's determination that the claimant reached MMI on April 12, 2014, with a zero percent IR.

We affirm that portion of the hearing officer's determination that the claimant did not have disability from April 12, 2014, through the date of the CCH.

We reverse that portion of the hearing officer's determination that the claimant did not have disability on April 11, 2014, as exceeding the scope of the agreed issue before him.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge