

APPEAL NO. 150510  
FILED APRIL 21, 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 July 18, 2014, and December 17, 2014, with the record closing on February 2, 2015, in Dallas, 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 cervical stenosis at C2-3, C5-6, or C6-7, cervical disc degeneration, or cervical spondylosis with myelopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 21, 2013, with a zero percent impairment rating (IR); (3) the employer did not tender the claimant a bona fide offer of employment (BFOE); and (4) the claimant did not have disability resulting from the compensable injury of [Date of Injury], during the period from December 9, 2013, through the date of the CCH.

The claimant appealed the hearing officer's determination regarding the extent of her compensable injury, as well as the hearing officer's MMI, IR, and disability determinations. The claimant contended that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The claimant also pointed out in her appeal that the hearing officer failed to determine the compensability of a condition that was added to the extent-of-injury issue at the CCH. The respondent (self-insured) responded, urging affirmance of the hearing officer's determinations.

The hearing officer's determination that the employer did not tender the claimant a BFOE was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [Date of Injury] that extends to a cervical sprain/strain. The claimant testified she was injured when she hit a very large pothole while driving a bus.

**EXTENT OF INJURY**

That portion of the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to cervical stenosis at C2-3, C5-6, or C6-7, cervical disc degeneration, or cervical spondylosis with myelopathy is supported by sufficient evidence and is affirmed.

Upon the claimant's request and a finding of good cause by the hearing officer, the following condition was added to the extent-of-injury issue: nonunion of the anterior C1 arch left of midline and of the C1 lamina in the midline. Although the hearing officer noted in the discussion portion of the decision that he added this condition to the extent-of-injury issue, the hearing officer made no findings of fact, conclusions of law, or a decision as to whether the compensable injury of [Date of Injury], extends to nonunion of the anterior C1 arch left of midline and of the C1 lamina in the midline. Because the hearing officer failed to make a determination on this condition, which was properly before him to determine, the hearing officer's decision is reversed as being incomplete. See Appeals Panel Decision (APD) 131684, decided September 13, 2013. Accordingly, we reverse that portion of the hearing officer's extent-of-injury determination as incomplete and we remand the issue of whether the compensable injury of [Date of Injury], extends to nonunion of the anterior C1 arch left of midline and of the C1 lamina in the midline.

### **MMI, IR, AND DISABILITY**

The hearing officer determined that the claimant reached MMI on November 21, 2013, with a zero percent IR, and that the claimant did not have disability resulting from the compensable injury of [Date of Injury], during the period from December 9, 2013, through the date of the CCH. However, given that we have reversed the hearing officer's decision as being incomplete and have remanded the issue of whether the compensable injury of [Date of Injury], extends to nonunion of the anterior C1 arch left of midline and of the C1 lamina in the midline, we also reverse the hearing officer's determinations that the claimant reached MMI on November 21, 2013, with a zero percent IR, and that the claimant did not have disability resulting from the compensable injury of [Date of Injury], during the period from December 9, 2013, through the date of the CCH. We remand the issues of MMI, IR, and disability to the hearing officer for further action consistent with this decision.

### **SUMMARY**

We affirm that portion of the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to cervical stenosis at C2-3, C5-6, or C6-7, cervical disc degeneration, or cervical spondylosis with myelopathy.

We reverse the remainder of the hearing officer's extent-of-injury determination as incomplete and we remand the issue of whether the compensable injury of [Date of Injury], extends to nonunion of the anterior C1 arch left of midline and of the C1 lamina in the midline.

We reverse the hearing officer's determination that the claimant reached MMI on November 21, 2013, with a zero percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant did not have disability resulting from the compensable injury of [Date of Injury], during the period from December 9, 2013, through the date of the CCH, and we remand the disability issue to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the hearing officer is to make findings of fact, conclusions of law, and a determination as to whether the compensable injury of [Date of Injury], extends to nonunion of the anterior C1 arch left of midline and of the C1 lamina in the midline. The hearing officer is to then make a determination regarding the claimant's date of MMI, IR, and disability.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **DALLAS AREA RAPID TRANSIT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**GARY THOMAS  
1401 PACIFIC AVENUE  
DALLAS, TEXAS 75202.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge