

APPEAL NO. 150779
FILED JUNE 15, 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 December 8, 2014, with the record closing on March 16, 2015, in Lubbock, 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), includes T12-L1 disc herniation with compression, but does not include disc desiccation at T11-12 and L5-S1, and lumbar radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 11, 2014; and (3) the claimant's impairment rating (IR) is five percent.

The claimant appealed the hearing officer's determination of extent of injury that was not favorable to him, as well as the MMI and IR determinations, arguing that they are against the great weight of the evidence. 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 do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The hearing officer's determinations that: (1) the compensable injury of (date of injury), includes T12-L1 disc herniation with compression, but does not include disc desiccation at T11-12 and L5-S1, and lumbar radiculopathy; (2) the claimant reached MMI on February 11, 2014; and (3) the claimant's IR is five percent are supported by sufficient evidence and are affirmed.

However, we reform the hearing officer's decision because the hearing officer's finding of fact conflicts with the hearing officer's conclusion of law and decision as

explained below, with regard to the extent-of-injury condition in dispute specific to disc desiccation at T11-12.

In Finding of Fact No. 3 the hearing officer found that the claimant's T12-L1 disc herniation with compression, disc desiccation at T11-12 arose out of or naturally flowed from the compensable injury or was worsened, enhanced, or accelerated by the compensable injury. However, in Finding of Fact No. 4 the hearing officer found that the claimant's disc desiccation at T11-12 and L5-S1 and lumbar radiculopathy did not arise out of or naturally flow from the compensable injury and were not worsened, enhanced, or accelerated by the compensable injury. In Conclusion of Law No. 3 and the decision, the hearing officer determined that the compensable injury of (date of injury), includes T12-L1 disc herniation with compression, but does not include disc desiccation at T11-12 and L5-S1, and lumbar radiculopathy.

In this case, the hearing officer mistakenly included in Finding of Fact No. 3 the extent-of-injury condition in dispute of disc desiccation at T11-12, given that the hearing officer makes clear in Finding of Fact No. 4, Conclusion of Law No. 3, and the decision, that the compensable injury of (date of injury), does not include disc desiccation at T11-12. Accordingly, we reform Finding of Fact No. 3 by striking "disc desiccation at T11-12" to reflect the hearing officer's determination that the compensable injury does not include disc desiccation at T11-12, to conform to the evidence and the hearing officer's Finding of Fact No. 4, Conclusion of Law No. 3, and the decision.

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

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge