

APPEAL NO. 150887
FILED JULY 17, 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 April 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 , extends to left shoulder¹ sub-deltoid bursitis and impingement syndrome, but does not extend to a rotator cuff tear, AC joint sub-acromial outlet arthrosis, or cervical radiculopathy; (2) the appellant/cross-respondent (claimant) is not at maximum medical improvement (MMI); (3) the claimant's impairment rating (IR) cannot yet be determined; and (4) the claimant had disability from November 7, 2013, to April 10, 2014, but not thereafter through the date of the hearing.

The claimant appealed that portion of the hearing officer's extent of injury and disability determinations that were not favorable to him, as well as the MMI and IR determinations. The respondent/cross-appellant (carrier) responded, urging affirmance of the hearing officer's extent of injury and disability determinations that were appealed by the claimant. The carrier agreed with the claimant that the MMI and IR determinations should be reversed. The carrier cross-appealed that portion of the hearing officer's extent of injury and disability determinations that were favorable to the claimant, as well as the MMI and IR determinations. Also, the carrier requests that the Appeals Panel correct the venue stipulation from Fort Worth field office to Houston West field office as stipulated to by the parties at the CCH on April 15, 2015. Also, the carrier requests that the Appeals Panel clarify the hearing officer's conflicting language regarding disability which includes both "to" and "through" in determining the ending date of disability. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

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)

¹ We note that the hearing officer's Decision and Order at the beginning of the decision does not reference the left shoulder, however Finding of Fact No. 3, Conclusion of Law No. 3, and the Decision and Order at the end of the decision reference the left shoulder.

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 claimant testified he was employed as a painter and he sustained a compensable injury on, when he caught a falling ladder with his left arm. The parties stipulated that the claimant sustained a compensable injury on, which includes a left shoulder strain with sub-deltoid bursitis.

VENUE AND DOCKET NUMBER

Review of the record indicates that the parties stipulated at the CCH held on April 15, 2015, that venue was proper in the Houston West field office of the Texas Department of Insurance, Division of Workers' Compensation (Division). The hearing officer mistakenly states in Finding of Fact No. 1. A. that venue is proper in the Fort Worth field office of the Division. Also, we note that the hearing officer mistakenly listed the docket number as "FW" which references the Fort Worth field office.

Accordingly, we reform the hearing officer's Finding of Fact No. 1. A. to conform to the parties' stipulation at the CCH held on April 15, 2015, that venue is proper in the Houston West field office of the Division. Also, we reform the hearing officer docket number to correspond to the correct venue in the Houston West field office, from DOCKET NO. FW-14-114115-01-CC-HD40 to DOCKET NO. HW-14-114115-01-CC-HD40.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of , extends to and includes left shoulder impingement syndrome and sub-deltoid bursitis but not a rotator cuff tear, AC joint sub-acromial outlet arthrosis, or cervical radiculopathy is supported by sufficient evidence and is affirmed.

MMI AND IR

The hearing officer's determinations that the claimant is not at MMI, and the IR cannot yet be determined are supported by sufficient evidence and are affirmed.

DISABILITY

The hearing officer's Decision and Order at the beginning of the decision and Finding of Fact No. 6 states that the claimant had disability from November 7, 2013,

“through” April 10, 2014, but not thereafter through the present. The hearing officer’s Conclusion of Law No. 6 and the Decision at the end of the decision states that the claimant had disability from November 7, 2013, “to” April 10, 2014, but not thereafter through the present. The carrier argues on appeal that the hearing officer’s ending date of disability is confusing given the conflicting language of “through” and “to”.

In evidence is a Work Status Report (DWC-73) dated April 21, 2014 that states that the claimant is allowed to return to work as of April 10, 2014, without restrictions. The hearing officer states in his decision that “[t]he claimant received a full-duty release to return to work from [(Dr. N)] at Concentra effective April 10, 2014. The claimant has proven disability only until that date as a result of his compensable injury.”

The hearing officer’s discussion and the evidence presented at the CCH on April 15, 2015, makes clear that the hearing officer determined that the claimant had disability from November 7, 2013, to April 10, 2014. We affirm by reforming that portion of the hearing officer’s Decision and Order at the beginning of the decision and Finding of Fact No. 6 to conform the evidence, and Conclusion of Law No. 6 and the Decision at the end of the decision, that the claimant had disability from November 7, 2013, to April 7, 2014, due to the compensable injury sustained on, but not thereafter through the date of the hearing.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury of , extends to left shoulder impingement syndrome and sub-deltoid bursitis, but not a rotator cuff tear, AC joint sub-acromial outlet arthrosis, or cervical radiculopathy.

We affirm the hearing officer’s determinations that the claimant is not at MMI, and the IR cannot yet be determined.

We affirm, as reformed, the hearing officer’s determination that the claimant had disability from November 7, 2013, to April 10, 2014, due to the compensable injury sustained on, but not thereafter through the date of the hearing.

We reform the hearing officer’s Finding of Fact No. 1. A. to conform to the parties’ stipulation at the CCH held on April 15, 2015, that venue is proper in the Houston West field office of the Division.

We reform the hearing officer’s docket number to correspond to the correct venue in the Houston West field office, from DOCKET NO. FW-14-114115-01-CC-HD40 to DOCKET NO. HW-14-114115-01-CC-HD40.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge