APPEAL NO. 151112
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 was held on April 21, 2015, in El Paso, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the compensable injury sustained by the appellant (claimant) on (date of injury), does not extend to gait derangement and the claimant's impairment rating (IR) is 10%. The claimant appealed, disputing the hearing officer's extent of injury and IR determinations. The claimant argues that the hearing officer erred by adding the extent-of-injury issue regarding gait derangement and that the hearing officer should have adopted the 22% IR certified by the designated doctor. Additionally, the claimant argues that the hearing officer should not have allowed (Dr. O) to testify because of the respondent's (carrier) failure to provide information through interrogatories timely. The carrier responded, urging affirmance of the disputed extent of injury and IR determinations.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on (date of injury). In evidence was a prior decision and order that determined the compensable injury extends to depression, dizziness, post-concussion syndrome, left shoulder MRI findings, headaches, and chronic pain syndrome. The same decision and order determined that the compensable injury sustained by the claimant on (date of injury), does not extend to a traumatic injury to the eyeball, hypertension, an injury to the right shoulder including MRI findings of the right shoulder, bilateral carpal tunnel syndrome, or a lumbar sprain/strain. The medical records reflect that the claimant was hit in the head by a "tote" while in the course and scope of his employment.

EVIDENTIARY OBJECTIONS

The claimant asserts that the hearing officer erred in allowing the testimony of Dr. O because the carrier did not timely provide answers to interrogatories which in part asked questions regarding how Dr. O arrived at his conclusions. Dr. O's narrative report was admitted into evidence without objection and in that report Dr. O detailed the medical records he reviewed and discussed how he arrived at his conclusions. To obtain a reversal for the admission of evidence, the appellant must demonstrate that the evidence was actually erroneously admitted and that "the error was reasonably calculated to cause and probably did cause rendition of an improper judgment."

Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. *Atl. Mut. Ins. Co. v. Middleman*, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In the present case, after listening to the arguments of the parties, the hearing officer found good cause for allowing Dr. O to testify. Under the facts of this case, the hearing officer's admission of the complained-of evidence does not constitute reversible error.

ADDITION OF THE EXTENT-OF-INJURY ISSUE

We find no error in the hearing officer adding the issue of whether the compensable injury extends to gait derangement.

EXTENT OF INJURY AND IR

The hearing officer found that gait derangement did not arise out of or naturally flow from the compensable injury. That finding is supported by sufficient evidence.

The hearing officer found that the August 1, 2014, date of maximum medical improvement (MMI) and 22% IR certified by the designated doctor are not supported by the preponderance of the evidence. Additionally, the hearing officer found that the August 1, 2014, date of MMI and 10% IR certified by the post-designated doctor RME are supported by the preponderance of the evidence. Those findings are supported by sufficient evidence.

However, the hearing officer failed to include any conclusions of law regarding the disputed issues of extent of injury or IR in her decision. Section 410.168 provides that a hearing officer's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that a hearing officer's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due. Accordingly, we reverse the hearing officer's decision as being incomplete and remand the issues of IR and whether the compensable injury extends to gait derangement to the hearing officer to include conclusions of law in her decision. No new evidence is to be taken.

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* Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

CORPORATION SERVICES COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge