

APPEAL NO. 151157  
FILED AUGUST 6, 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 24, 2014, and continued on October 10, 2014, with the record closing on May 5, 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 on (date of injury), extends to L4-5 bilateral disc protrusion/herniation, L5-S1 disc displacement, L4-5 spinal stenosis, C3-7 disc protrusions/herniations, L5-S1 radiculopathy, and radiculopathy of C4-7 nerve roots; (2) the respondent (claimant) reached maximum medical improvement (MMI) on the statutory date of January 23, 2014; (3) the claimant's impairment rating (IR) is 10%; and (4) the claimant had disability beginning (date of injury), and continuing through the date of the CCH.

The appellant (carrier) appealed the hearing officer's extent of injury, MMI, IR, and disability determinations based on sufficiency of the evidence. The appeal file does not contain a response from the claimant.

**DECISION**

Affirmed in part and reversed and rendered in part.

The claimant testified that he was lifting boxes of jewelry and injured his back on (date of injury). The parties stipulated that the claimant sustained a compensable injury at least in the form of a lumbar sprain/strain, lumbar radiculitis, and lumbar facet syndrome.

The claimant testified that he attended a functional capacity evaluation (FCE) due to his compensable injury on (date of injury). The claimant testified that during the FCE an incident occurred in which the FCE attendant accidentally fell on him while he was seated next to a treadmill. The claimant testified that because of that incident he sustained additional injuries to his lumbar and cervical spine.

The parties stipulated that the statutory MMI date is January 23, 2014.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury on (date of injury), extends to L4-5 bilateral disc protrusion/herniation, L5-S1 disc displacement, L4-5 spinal stenosis, C3-7 disc protrusions/herniations, L5-S1 radiculopathy, and radiculopathy of C4-7 nerve roots is supported by sufficient evidence and is affirmed.

## MMI AND IR

The hearing officer's determinations that the claimant reached MMI on the statutory date of January 23, 2014, and the claimant's IR is 10% are supported by sufficient evidence and are affirmed.

## DISABILITY

Disability means the inability to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that he had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove that the compensable injury was the sole cause of his disability only that it was a producing cause. APD 042097, *supra*.

The hearing officer determined that the claimant had disability on (date of injury), and continuing through the date of the CCH. The claimant testified that he was injured on (date of injury), and that his last date of employment with the employer was February 27, 2013. In evidence are payroll records that corroborate with the claimant's testimony that February 27, 2013, was his last date of employment. The claimant testified that he was terminated by the employer on February 27, 2013. The Appeals Panel has held that even a claimant's termination for cause does not, in itself, foreclose the existence of disability. See APD 990655, decided May 13, 1999. Also, the payroll records show that the claimant worked up until February 27, 2013. In evidence are Work Status Reports (DWC-73) dated after February 27, 2013, that show the claimant was released to work with restrictions due to his compensable injury. There is no evidence that the claimant earned less than his pre-injury wages prior to February 27, 2013. The claimant stated during closing argument at the CCH of October 10, 2014, that the totality of the evidence showed that the claimant had disability from February 28, 2013, through the date of statutory MMI.

The evidence established that the beginning date of disability was on February 28, 2013, based on the claimant testimony and evidence. That portion of the hearing officer's determination that the claimant had disability through the date of the CCH is supported by sufficient evidence.

Accordingly, we reverse that portion of the hearing officer's determination that the claimant had disability from (date of injury), through February 27, 2013, and we render a new decision that the claimant had disability beginning on February 28, 2013, and continuing through the date of the CCH.

### **SUMMARY**

We affirm the hearing officer's determination that the compensable injury on (date of injury), extends to L4-5 bilateral disc protrusion/herniation, L5-S1 disc displacement, L4-5 spinal stenosis, C3-7 disc protrusions/herniations, L5-S1 radiculopathy, and radiculopathy of C4-7 nerve roots.

We affirm the hearing officer's determination that the claimant reached MMI on the statutory date of January 23, 2014.

We affirm the hearing officer's determination that the claimant's IR is 10%.

We reverse the hearing officer's determination that the claimant had disability from (date of injury), through February 27, 2013, and we render a new decision that the claimant had disability beginning on February 28, 2013, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TX 75201.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret Turner  
Appeals Judge