

APPEAL NO. 160424
FILED APRIL 28, 2016

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 January 7, 2015, with the record closing on January 27, 2016, in Weslaco, 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), extends to headaches and head concussion; (2) the compensable injury of (date of injury), does not extend to seizure disorder, disc bulges at L3-4 and L5-S1, disc herniation at L4-5, disc herniations at C4-5, C5-6, and C6-7, post-traumatic stress disorder (PTSD), anxiety, depression, blurred vision, and cognitive disorders; (3) the appellant (claimant) reached maximum medical improvement (MMI) on October 9, 2013; and (4) the claimant's impairment rating (IR) is five percent.

The claimant appealed the hearing officer's determination of the extent of the compensable injury that was adverse to him, as well as the hearing officer's MMI and IR determinations based on sufficiency of the evidence. The claimant states in his appeal that the specific conditions of confusion, disorientation, and mood disorder were not included in the issue statement from the benefit review conference (BRC) and were not actually litigated by the parties at the CCH, and therefore the claimant appeals the hearing officer's finding that the preponderance of the evidence is contrary to (Dr. S) opinion relating to the extent of the compensable injury because that finding improperly excludes those conditions. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

The hearing officer's determination that the compensable injury of (date of injury), extends to headaches and head concussion has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reformed in part.

The parties stipulated in part that the claimant sustained a compensable injury on (date of injury), in the form of at least cervical, thoracic, and lumbar sprains/strains and a head contusion, and that the date of statutory MMI is March 1, 2014. The claimant testified he was injured in a rollover motor vehicle accident.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to seizure disorder, disc bulges at L3-4 and L5-S1, disc herniation at L4-5, disc herniations at C4-5, C5-6, and C6-7, PTSD, anxiety, depression, blurred vision, and cognitive disorders is supported by sufficient evidence and is affirmed.

MMI/IR

The hearing officer's determinations that the claimant reached MMI on October 9, 2013, with a five percent IR are supported by sufficient evidence and are affirmed.

FINDING OF FACT CLARIFICATION

The hearing officer found in Finding of Fact No. 4 that after the July 19, 2012, examination, Dr. S, the first designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation, opined that the conditions of confusion, disorientation, mood disorder, and depression were a result of the compensable injury of (date of injury). We note that the condition of depression was included in the extent-of-injury issue before the hearing officer and litigated by the parties at the CCH, while the conditions of confusion, disorientation, and mood disorder were neither before the hearing officer nor litigated by the parties at the CCH. Neither party appealed Finding of Fact No. 4.

The claimant appealed Finding of Fact No. 6, in which the hearing officer found that "[t]he preponderance of the evidence is contrary to [Dr. S's] opinion relating to the extent of the compensable injury of (date of injury)," because the claimant "is not sure if the Hearing Officer's Finding of Fact [No.] 6 addressed the diagnoses of 'confusion,' 'disorientation,' and 'mood disorder.'" The claimant contends that if Finding of Fact No. 6 does address these diagnoses, the hearing officer abused his discretion by rendering decisions on diagnoses that did not come out of the BRC and were not litigated by the parties.

The hearing officer made no conclusions of law or a decision regarding the compensability of confusion, disorientation, and mood disorder, and we interpret Finding of Fact No. 6 to include only the conditions at issue before the hearing officer, which included depression. Accordingly, we clarify the hearing officer's decision by reforming Finding of Fact No. 6 as follows:

The preponderance of the evidence is contrary to Dr. S's opinion that depression is a result of the compensable injury of (date of injury).

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to seizure disorder, disc bulges at L3-4 and L5-S1, disc herniation at L4-5, disc herniations at C4-5, C5-6, and C6-7, PTSD, anxiety, depression, blurred vision, and cognitive disorders.

We affirm the hearing officer's determination that the claimant reached MMI on October 9, 2013.

We affirm the hearing officer's determination that the claimant's IR is five percent.

We clarify the hearing officer's decision by reforming Finding of Fact No. 6 as follows:

The preponderance of the evidence is contrary to Dr. S's opinion that depression is a result of the compensable injury of (date of injury).

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

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

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge