

APPEAL NO. 160587
FILED MAY 23, 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 March 7, 2016, in El Paso, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury sustained on (date of injury), does not extend to an injury to the head, both hands, trigger finger to the bilateral index and middle fingers, an injury to the left shoulder, vision loss to both eyes, an injury to both heels, a bone spur in the left heel, bilateral elbow strains, bilateral carpal tunnel syndrome, chronic low back pain syndrome, lumbar stenosis, lumbar spondylosis, lumbar spondylolisthesis, degenerative arthritic changes at L5-S1, lordosis of the spine, degenerative disc disease of the cervical and lumbar spine or enthesopathy.

The appellant (claimant) appealed, disputing the hearing officer's determination of the extent of the compensable injury. The claimant argues that the preponderance of the medical evidence shows that the compensable injury extends to the disputed conditions the hearing officer determined not to be part of the compensable injury. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury determination.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury. The claimant testified that a student grabbed her and she attempted a maneuver to dislodge the student's hands and fell sustaining injuries.

The hearing officer's determination that the compensable injury sustained on (date of injury), does not extend to an injury to the head, both hands, trigger finger to the bilateral index and middle fingers, an injury to the left shoulder, vision loss to both eyes, an injury to both heels, a bone spur in the left heel, bilateral elbow strains, bilateral carpal tunnel syndrome, chronic low back pain syndrome, lumbar stenosis, lumbar spondylosis, lumbar spondylolisthesis, degenerative arthritic changes at L5-S1, lordosis of the spine, degenerative disc disease of the cervical and lumbar spine or enthesopathy is supported by sufficient evidence and is affirmed.

The hearing officer noted in the Discussion portion of her Decision and Order that she admitted Hearing Officer's Exhibit No. 3 after the CCH which was an e-mail sent to and from the parties confirming the nature of the compensable injury. Hearing Officer's Exhibit No. 3 reflects that the carrier accepted a cervical sprain, thoracic sprain, and lumbar sprain as part of the compensable injury.

We note the condition of "thoracic muscle strain" was listed as a condition in the disputed extent-of-injury issue in the Benefit Review Conference Report. In the Statement of the Case, the condition of "a thoracic strain" was listed as one of the disputed conditions to be resolved at the CCH. A review of the record reflects the parties agreed that the disputed issue was the one listed in the Statement of the Case. The parties did not request to modify the extent-of-injury issue by removing the condition of thoracic strain from the disputed issue. However, the hearing officer failed to make a finding of fact, conclusion of law, or decision on whether the compensable injury of (date of injury), extends to a thoracic strain or thoracic muscle strain. The parties e-mail exchange which was admitted into evidence as Hearing Officer's Exhibit No. 3 does not resolve this issue because it confirmed that the carrier accepted a thoracic sprain and does not discuss a thoracic strain. Accordingly, we reverse the hearing officer's decision as being incomplete and remand to the hearing officer to make a finding of fact, conclusion of law, and decision on whether the compensable injury of (date of injury), extends to a thoracic strain or a thoracic muscle strain.

SUMMARY

We affirm the hearing officer's determination that the compensable injury sustained on (date of injury), does not extend to an injury to the head, both hands, trigger finger to the bilateral index and middle fingers, an injury to the left shoulder, vision loss to both eyes, an injury to both heels, a bone spur in the left heel, bilateral elbow strains, bilateral carpal tunnel syndrome, chronic low back pain syndrome, lumbar stenosis, lumbar spondylosis, lumbar spondylolisthesis, degenerative arthritic changes at L5-S1, lordosis of the spine, degenerative disc disease of the cervical and lumbar spine or enthesopathy.

We reverse the hearing officer's decision as being incomplete and remand to the hearing officer to make a finding of fact, conclusion of law, and decision on whether the compensable injury of (date of injury), extends to a thoracic strain or a thoracic muscle strain.

REMAND INSTRUCTIONS

On remand the hearing officer is to make a finding of fact, conclusion of law, and decision on whether the compensable injury of (date of injury), extends to a thoracic strain or a thoracic muscle strain.

No new evidence should be admitted at the CCH on remand.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge