

APPEAL NO. 050576
FILED MAY 4, 2005

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 February 15, 2005. The hearing officer determined that the compensable injury includes a seizure disorder and post-traumatic headaches, and that the respondent (claimant) had disability "intermittently from March 11, 2003 through July 9, 2004 and from July 10, 2004," through the date of the CCH.

The appellant (self-insured) appeals, contending that there is insufficient evidence establishing a causal connection between the compensable injury and the claimed conditions, and that because the compensable injury does not include the headaches and seizures, the claimant did not have disability. The self-insured also seeks clarification as to the specific dates of "intermittent" in order to calculate temporary income benefits (TIBs). The file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant, a traffic and parking officer at one of the self-insured's facilities, sustained a compensable injury on _____. The claimant testified how she was hit in the head by a car door. The claimant's testimony and medical records reflect that she went to a hospital emergency room (ER) on _____, received stitches for her head injury and was prescribed medication. The claimant testified that the ER doctor took her off work for a week and that she subsequently returned to work. At some later time, while at work, the claimant suffered an episode, which was initially termed a panic attack. The claimant began treating with Dr. H. The first record from Dr. H is dated April 17, 2003, and references a panic attack but not the _____, compensable injury. Dr. H subsequently referred the claimant to Dr. L, a neurologist who diagnosed the claimant with "seizure like spells." Although there was a lack of objective diagnostic evidence of seizures, several doctors, including doctors H and L are of the opinion that the claimant has seizures and that the cause is the compensable injury of _____. The hearing officer's determination on this issue is sufficiently supported by the evidence and is affirmed.

The self-insured's principal basis of disputing disability was that the claimed conditions were the cause of the claimant's inability to obtain and retain employment at the preinjury wage (see Section 401.011(16) for the definition of disability). Having affirmed the hearing officer's decision that the compensable injury included the claimed conditions, we reject the self-insured's argument on this point. The hearing officer finds that the claimant had disability "intermittently" between March 11, 2003, and July 9, 2004, when Dr. L took the claimant off work altogether. It is relatively undisputed that the claimant missed work for a few days after March 11, 2003, until she returned to

work. For the period between March 11, 2003, and July 9, 2004, the claimant admits she worked some periods but had other periods when she was unable to work, a period when she took some vacation time and other periods of time when she missed work. The self-insured correctly points out that it is at risk of overpaying or underpaying without a determination of specific dates of disability. We agree and remand for the hearing officer to make such specific determinations. We note that Claimant's Exhibit No. 8 contains 119 pages of timesheets (some may be duplications). Most of the timesheets list the cause of absences as "seizures" but on September 10 through 12, 2003, the cause of absence is "broke rib" (Claimant's Exhibit No. 8 at page 55). Others list the cause of the absence as "had a bad weekend," "not doing well" and "got sick." (Claimant's Exhibit No. 8 pages 115 through 117). Claimant's Exhibit No. 11 is listed as "List of Period of Disability" and consists of the hours in each week from March 9, 2003, through July 31, 2004, that the claimant had "hours missed." The hours varied from 2 hours to 40 hours and apparently lists her pay for that period. It is not at all clear that the claimant's pay was actually reduced by that amount each week or that the claimant was unable to obtain and retain employment at the preinjury wage. Nor is there any evidence which periods of "hours missed" were due to vacation and other periods not related to the compensable injury.

We affirm the hearing officer's determinations on the extent of injury and that the claimant had disability from July 10, 2004, to the date of the CCH. We reverse the hearing officer's determination that the claimant had disability "intermittently from March 11, 2003 through July 9, 2004," and remand for the hearing officer to either find specific periods of disability or obtain agreement from the parties on the period or periods of disability. No additional evidentiary hearing need be held although the hearing officer may wish to have oral and/or written argument from the parties.

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 Workers' Compensation Commission's Division of Hearings, 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 Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
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Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge