

APPEAL NO. 052689
FILED JANUARY 27, 2006

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 October 28, 2005. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of ___, does not extend to or include her cervical spine and that the respondent (self-insured) has not waived its right to dispute compensability of the cervical spine. The claimant appealed, disputing both the extent of injury and waiver determinations. The self-insured responded, urging affirmance.

DECISION

Reversed and rendered

It was undisputed that the claimant sustained a compensable injury on ___. In dispute was whether the compensable injury extended to include the cervical spine and whether the self-insured waived its right to dispute compensability as to the cervical spine. The hearing officer noted that the claimant's physical therapy records reflect complaints of cervical pain as early as August 31, 2004. Additionally, in evidence was a medical report dated September 9, 2004, from (Dr. A), which noted that the claimant claimed to have developed severe neck and chest pain while trying to lift a heavy object at work. The September 9, 2004, report listed both cervical radiculopathy and cervical herniated disc as differential diagnoses. An MRI of the cervical spine dated September 20, 2004, was also in evidence which listed multilevel disc changes with specific findings listed at each of the following disc levels C2-3, C3-4, C4-5, C5-6, C6-7 and C7-T1.

The carrier filed a dispute dated September 13, 2004, which contained the following language:

"Self-Insured denies any and all liability and/or disability for both shoulder impingement syndrome, both wrist sprain/strain, both elbow sprain/strain and nerve entrapment as these are not related to the injury of ___ which was chest pain. There is no medical documentation or diagnostic testing indicating disability as related to the compensable injury."

At issue is whether the quoted language was sufficient to dispute the compensability of the cervical spine. The self-insured argues that the language it used in its dispute of September 13, 2004, is similar to Appeals Panel Decision (APD) 000119, decided March 6, 2000. However, the language quoted from the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in the dispute at issue in APD 000119, reflects the carrier stated that "compensable injury is limited to the lumbar area and no other body part." Further the carrier specifically disputed that "the compensable injury extends to both shoulders or any other body part." In the instant

case the self-insured specified that the compensable injury of ___, was chest pain but it limited its dispute to specific conditions which did not include the cervical spine.

The self-insured additionally cited APD 951093, decided August 22, 1995, for support of its argument that the hearing officer's decision should be affirmed. However, in APD 951093, the Appeals Panel reversed the hearing officer's decision that the carrier waived its right to contest compensability of the claimant's back injury. In that case, the hearing officer's decision regarding waiver was based on the fact that the carrier failed to cite any specific grounds for its denial. APD 951093, *supra*, went on to quote the language included in the dispute which specifically denied all coverage relating to any back injury. The carrier in that case specified that it accepted only the knee as part of the compensable injury.

The hearing officer specifically found that the self-insured received its first written notice on August 25, 2004, and that on September 27, 2004, the self-insured received a medical report dated September 9, 2004, a fair reading of which revealed that the claimant had been diagnosed with having sustained a compensable injury to her cervical spine. Neither finding was disputed on appeal. The self-insured was found to have notice that the cervical spine was alleged to be part of the compensable injury within the 60-day waiver period. The second dispute filed by the carrier was filed on January 13, 2005, well outside the 60-day waiver period. The evidence does not reflect that the self-insured included the cervical spine in the conditions it specifically disputed as being part of the compensable injury within the 60-day waiver period. Nor does the evidence reflect that the self-insured disputed any and all conditions except the "chest pain" it identified as the compensable injury.

The hearing officer's determination that the self-insured did not waive its right to dispute compensability as to an alleged injury to claimant's cervical spine is reversed and a new decision rendered that the self-insured did waive its right to dispute compensability as to an alleged injury to claimant's cervical spine. Because the carrier waived its right to dispute the compensability of the claimant's alleged cervical spine, it became compensable as a matter of law. Therefore, the hearing officer's determination that the claimant's compensable injury of ___, does not extend to or include her cervical spine is reversed and a new decision rendered that the claimant's compensable injury of ___, does extent to and include her cervical spine as a matter of law.

The true corporate name of the insurance carrier is **MHMR OF HARRIS COUNTY, a self-insured governmental entity through TEXAS COUNCIL RISK MANAGEMENT** and the name and address of its registered agent for service of process is

**MARY LOU FLYNN-DUPART
10535 BOYER BOULEVARD, SUITE 100
AUSTIN, TEXAS 78758.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge