

APPEAL NO. 100451  
FILED JUNE 9, 2010

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 11, 2010. The disputed issues before the hearing officer were:

- (1) Did the respondent (claimant) sustain a compensable injury on \_\_\_\_\_?
- (2) Was the claimed injury caused by the claimant's willful intention and attempt to injure himself, thereby relieving the appellant (carrier) of liability for compensation?
- (3) If the claimant sustained a compensable injury, does the compensable injury include: lumbar disc displacement at L4-5 and L5-S1; lumbar disc extrusion at L5-S1; lumbar herniated nucleus pulposus (HNPs) at L4-5 and L5-S1; lumbar disc protrusions at L4-5 and L5-S1; lumbar radiculopathy/radiculitis; lumbar facet hypertrophy at L4-5; and contusion of the head with headaches in addition to a lumbar sprain/strain and thoracic sprain/strain?
- (4) Did the claimant have disability resulting from an injury sustained on \_\_\_\_\_, from \_\_\_\_\_, through the present?

The hearing officer determined that: (1) the claimant sustained a compensable injury on \_\_\_\_\_; (2) the claimed injury was not caused by the claimant's willful intention and attempt to injure himself; therefore, the carrier is not relieved of liability for compensation; (3) the compensable injury includes: lumbar disc displacement at L4-5 and L5-S1; lumbar disc extrusion at L5-S1; lumbar HNPs at L4-5 and L5-S1; lumbar disc protrusions at L4-5 and L5-S1; lumbar radiculopathy/radiculitis; lumbar facet hypertrophy at L4-5; and contusion of the head with headaches in addition to a lumbar sprain/strain and thoracic sprain/strain; and (4) the claimant had disability from September 12, 2009, through the date of the CCH, March 11, 2010.

The carrier appealed the hearing officer's determinations on the disputed issues of compensability, the claimant's willful intention or attempt to injure himself, extent of injury and disability. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that he injured his back and head at work on \_\_\_\_\_. He testified that when he lifted a steel frame, which weighed 50-70

pounds, he felt a pop in his low back, dropped the metal frame, lost his balance and fell backwards, hitting his head against a pallet. The claimant was initially treated that same day at a clinic and received an examination and x-rays and MRIs of the thoracic and lumbar spine. The claimant was initially diagnosed with back pain and a headache. The claimant testified that he began treating with (Dr. Z) for his work-related injuries.

### **COMPENSABILITY, WILLFUL INTENTION AND ATTEMPT TO INJURE HIMSELF, AND DISABILITY**

The hearing officer's determinations that: the claimant sustained a compensable injury on \_\_\_\_\_; the claimed injury was not caused by the claimant's willful intention and attempt to injure himself; therefore, the carrier is not relieved of liability for compensability; and the claimant had disability from September 12, 2009, through the date of the CCH, are supported by sufficient evidence and are affirmed.

### **EXTENT OF INJURY**

That portion of the hearing officer's determination that the compensable injury includes: lumbar disc displacement at L4-5 and L5-S1; lumbar disc extrusion at L5-S1; lumbar disc protrusions at L4-5 and L5-S1; lumbar radiculopathy/radiculitis; lumbar facet hypertrophy at L4-5; and contusion of the head with headaches in addition to a lumbar sprain/strain and thoracic sprain/strain is supported by sufficient evidence and is affirmed.

An MRI of the lumbar spine dated \_\_\_\_\_, states in part that there is an impression of a "3.5 mm broad-based disc protrusion at L4-5 mildly effaces the anterior thecal sac without herniation or stenosis and the neural foramina are minimally compromised bilaterally, mainly due to facet hypertrophy" and a "5 mm broad-based disc protrusion at L5-S1 lies within the anterior epidural space and does not contact the anterior thecal sac. There is extrusion of this disc inferiorly behind the S1 vertebra." In a medical report dated November 24, 2009, Dr. Z, states that he reviewed the reports of the lumbar x-ray and MRI performed on \_\_\_\_\_, and that:

The protrusions of the discs at L4-5 is reported as without herniation. The protrusion at L5-S1 does not [state] whether or not a herniation is evinced and therefore herniation must be ruled out. Further tests to rule out the herniation at L5-S1 [are] necessary. [These tests] are medically necessary and include but are not limited to "lumbar spine myelogram and post myelogram CT" as well as a lumbar spine discogram.

The lumbar MRI states that there is a disc protrusion at L4-5 "without herniation." Dr. Z states in his report dated November 24, 2009, that the MRI findings at the L4-5 level show disc protrusions without herniations. Further, Dr. Z states that the MRI findings at the L5-S1 level show disc protrusions, however he concluded that because the MRI findings do not state whether there are herniations at that level "herniation must be ruled out." There are no further tests in evidence as described by Dr. Z to show HNPs at L4-5

and L5-S1. There is no report by a doctor in evidence which shows a diagnosis of HNPs at L4-5 and L5-S1.

Accordingly, we hold that the hearing officer's determination that the compensable injury included lumbar HNPs at L4-5 and L5-S1 to be so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the compensable injury includes lumbar HNPs at L4-5 and L5-S1 and we render a new decision that the compensable injury does not include lumbar HNPs at L4-5 and L5-S1.

### **SUMMARY**

We affirm the hearing officer's decision that the claimant sustained a compensable injury on \_\_\_\_\_. We affirm the hearing officer's decision that the compensable injury includes lumbar disc displacement at L4-5 and L5-S1; lumbar disc extrusion at L5-S1; lumbar disc protrusions at L4-5 and L5-S1; lumbar radiculopathy/radiculitis; lumbar facet hypertrophy at L4-5; and contusion of the head with headaches, lumbar sprain/strain and thoracic sprain/strain. We affirm the hearing officer's decision that the claimant had disability from September 12, 2009, through the date of the CCH.

We reverse the hearing officer's decision that the compensable injury included lumbar HNPs at L4-5 and L5-S1 and we render a new decision that the compensable injury does not include lumbar HNPs at L4-5 and L5-S1.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
D/B/A CSC – LAWYERS INCORPORATING SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

---

Veronica L. Ruberto  
Appeals Judge

CONCUR:

---

Thomas A. Knapp  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge