

APPEAL NO. 110154
FILED APRIL 5, 2011

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 December 8, 2010, with the record closing on January 4, 2011. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury sustained on _____, does extend to cervical spine MRI findings dated September 1, 2009 (C3-4 small central disc protrusion, C4-5 left central disc protrusion/extrusion producing grade II cord impingement, and C6-7 small left central disc protrusion); (2) the compensable injury sustained on _____, does not extend to cervical spine MRI findings dated September 1, 2009 (C6-7 small left central disc protrusion and Luschka joint hypertrophy with mild neuroforaminal stenosis and congenital canal stenosis due to short pedicles, AP diameter at 9 mm); (3) the compensable injury sustained on _____, does not extend to lumbar MRI findings dated September 1, 2009 (L4-5 internal desiccation with a left posterolateral annular tear subarticular disc herniation/protrusion and L5-S1 small left central disc herniation/protrusion producing deformity of the left S1 nerve root); (4) the appellant (claimant) has disability from May 6, 2010, continuing through the date of the CCH as a result of the injury sustained on _____; (5) the claimant has not reached maximum medical improvement (MMI); and (6) because the claimant has not reached MMI, an impairment rating (IR) cannot be assigned.

The claimant appealed, disputing the hearing officer's determinations of extent of injury that were unfavorable to him. The respondent (self-insured) responded, urging affirmance.

The hearing officer's determinations that: (1) the compensable injury of _____, extends to cervical spine MRI findings dated September 1, 2009 (C3-4 small central disc protrusion and C4-5 left central disc protrusion/extrusion producing grade II cord impingement); (2) the claimant has disability from May 6, 2010, continuing through the date of the CCH as a result of the injury sustained on _____; (5) the claimant has not reached MMI; and (6) because the claimant has not reached MMI, an IR cannot be assigned were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part as reformed and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that he injured his neck and back during a motor vehicle accident when the vehicle he was driving was rear-ended. The police report in evidence detailing the incident, stated the claimant was stopped at a stop sign when hit from behind by another vehicle. The police report noted that both vehicles had minor

damage. One of the issues in dispute at the CCH was whether or not the compensable injury extended to various MRI findings of the cervical and lumbar spine.

A designated doctor was appointed to determine the extent of the claimant's injury. He examined the claimant for this purpose on August 16, 2010. The designated doctor opined that the amount of damage done to the discs, especially at the C4-5 with a protrusion, occurs only with exertion of a large amount of force. He opined that the cervical herniation and disc disease and lumbar abnormal findings are directly attributable to the rear end collision.

Section 408.0041(a) provides in part that at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about: (3) the extent of the employee's compensable injury. Section 408.0041(e) provides, in part, that the report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. 28 TEX. ADMIN. CODE § 126.7(c) (Rule 126.7(c))¹ provides in part that a designated doctor examination shall be used to resolve questions about the following: (3) the extent of the employee's compensable injury.

The claimant underwent a required medical examination (RME) at the request of the self-insured on November 18, 2010. The RME noted that there was no significant damage to either vehicle involved in the accident but noted that the vehicles had heavy duty bumpers that prevented any significant damage. The RME doctor opined that the extent of the claimant's compensable injury is cervical disc protrusion at C4-5 and C6-7 and lumbar sprain. In a medical report dated November 12, 2009, the claimant's treating doctor opined that "the current herniated cervical disc seems to be causative from the injury." In a medical record review dated August 20, 2010, a physician performing a peer review opined that the MRI documents demonstrate marked degenerative changes in the lumbar and cervical spine that were in all medical likelihood pre-existing.

The hearing officer noted that neither the RME doctor nor the designated doctor specifically addressed the multiple degenerative findings found in both the lumbar and cervical spine MRIs. The hearing officer was persuaded that the evidence was insufficient and failed to establish that the claimant's pre-existing conditions to the cervical and lumbar spine were accelerated, worsened, or enhanced as a result of the compensable injury.

The hearing officer's determination that the compensable injury sustained on _____, does not extend to lumbar MRI findings dated September 1, 2009 (L4-5 internal desiccation with a left posterolateral annular tear subarticular disc herniation/protrusion and L5-S1 small left central disc herniation/protrusion producing deformity of the left S1 nerve root) is supported by sufficient evidence and is affirmed.

¹ We note that this provision is now found in Rule 127.1 of the new designated doctor rule effective February 1, 2011.

The hearing officer's determination that the compensable injury of _____, does not extend to congenital canal stenosis due to short pedicles, AP diameter at 9 mm is supported by sufficient evidence and is affirmed.

The hearing officer found that the multilevel minimal degenerative desiccation consistent with spondylosis and C5-6 circumferential disc bulging and Luschka joint hypertrophy with deformity of the right C6 nerve root sleeve and neuroforaminal stenosis were not accelerated, worsened or enhanced as a result of the compensable injury sustained on _____. That finding is supported by the evidence. However, the hearing officer failed to make a conclusion of law or a decision regarding those conditions. See Appeals Panel Decision 100590, decided July 23, 2010. Therefore, we reverse the hearing officer's decision as being incomplete and render a new decision that the compensable injury does not extend to multilevel minimal degenerative desiccation consistent with spondylosis and C5-6 circumferential disc bulging and Luschka joint hypertrophy with deformity of the right C6 nerve root sleeve and neuroforaminal stenosis.

The hearing officer found that the C6-7 small central disc protrusion was causally related to the compensable injury but that the C6-7 Luschka joint hypertrophy with mild neuroforaminal stenosis was not accelerated, worsened, or enhanced as a result of the compensable injury sustained on _____. Those findings are supported by sufficient evidence. However, the conclusions of law and decision were inconsistent regarding the C6-7 small central disc protrusion. The hearing officer determined that the compensable injury does extend to the C6-7 small left central disc protrusion and that the compensable injury does not extend to the C6-7 small left central disc protrusion. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury does not extend to the C6-7 small left central disc protrusion by striking that language. We affirm the hearing officer's determination that the compensable injury does include the C6-7 small central disc protrusion.

SUMMARY

We affirm the hearing officer's determination that the compensable injury sustained on _____, does not extend to lumbar MRI findings dated September 1, 2009 (L4-5 internal desiccation with a left posterolateral annular tear subarticular disc herniation/protrusion and L5-S1 small left central disc herniation/protrusion producing deformity of the left S1 nerve root). We affirm the hearing officer's determination that the compensable injury does include the C6-7 small central disc protrusion. We affirm the hearing officer's determination that the compensable injury of _____, does not extend to congenital canal stenosis due to short pedicles, AP diameter at 9 mm.

We reverse that portion of the hearing officer's determination that the compensable injury does not extend to the C6-7 small left central disc protrusion by striking that language.

We reverse the hearing officer's decision as being incomplete and render a new decision that the compensable injury does not extend to multilevel minimal degenerative desiccation consistent with spondylosis and C5-6 circumferential disc bulging and Luschka joint hypertrophy with deformity of the right C6 nerve root sleeve and neuroforaminal stenosis to conform with the finding of fact.

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

**MAYOR OF THE CITY OF (CITY)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge