

APPEAL NO. 130022  
FILED MARCH 18, 2013

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 3, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer determined that: (1) the compensable injury of [date of injury], does not include bilateral carpal tunnel syndrome (bilateral CTS) and Guyon's canal syndrome of the left wrist; (2) the appellant/cross-respondent (claimant) had disability from an injury sustained on [date of injury], only from October 3, 2011, through the date of the hearing; and (3) the average weekly wage (AWW) is \$432.86.

The claimant appealed the hearing officer's extent of injury and AWW determinations, as well as the adverse portion of the disability determination. The respondent/cross-appellant (carrier) appealed the disability and AWW determinations. The carrier responded to the claimant's appeal, urging affirmance for the issues on which it prevailed. The appeal file does not contain a response to the carrier's appeal.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the Texas Department of Insurance, Division of Workers' Compensation appointed [Dr. P] as the designated doctor for the purpose of extent of injury and disability.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of [date of injury], does not include bilateral CTS and Guyon's canal syndrome of the left wrist is supported by sufficient evidence and is therefore affirmed.

**AWW**

The definition of "wages" in Section 401.011(43) includes all forms of remuneration payable for a given period to an employee for personal services. The term includes market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration.

In the Background Information section of the decision, the hearing officer stated:

. . . [the] claimant testified in the hearing that she lived rent-free in a two bedroom apartment on the property she managed for approximately six years. She was asked to leave the apartment at the time of her termination. [The] [c]laimant credibly testified that she rented to others an apartment with the same floor plan she lived in for \$550.00/month. Multiplying \$550.00 x 12, then dividing by 56 equals \$117.86. ( $\$117.86 \times 13 = \$1,532.18$ ). Adding this amount to the total gross wages of \$4,095.00 reported by the employer on the [Employer's Wage Statement (DWC-3)], equals \$5,627.18. This total amount divided by 13 equals \$432.86.

The hearing officer determined the claimant's AWW is \$432.86.

Both parties appealed the hearing officer's AWW determination. The carrier argues that the hearing officer should not have included the \$550.00 in the calculation determining the claimant's AWW, contending that the claimant's use of the apartment was not part of an employment contract and gave no advantage or financial or economical gain attaching to the claimant to constitute wages. We disagree. The Appeals Panel has previously held the market value of an apartment may be included in calculating the AWW. See Appeals Panel Decision 042364-s, decided November 17, 2004.

The claimant appealed the hearing officer's AWW determination, contending the AWW calculation was based on a mathematical error. In determining the weekly amount of the \$550.00 rent, the hearing officer divided the annual amount of the rental benefit (\$6,600.00) by 56 rather than 52. When correcting the hearing officer's calculation to include 52, the number of weeks in a year, the AWW calculates to \$441.92 ( $\$550.00 \times 12 = \$6,600.00$ ;  $\$6,600.00/52 = \$126.92$ ;  $\$126.92 \times 13 = \$1,649.96$ ;  $\$1,649.96 + \$4,095.00$  [the gross amount of wages] =  $\$5,744.96$  [the gross wages plus rental benefit];  $\$5,744.96/13 = \$441.92$ ). Accordingly, we reverse the hearing officer's determination that the claimant's AWW is \$432.86, and render a new decision that the claimant's AWW is \$441.92.

## **DISABILITY**

The hearing officer's determination that the claimant had disability from an injury sustained on [date of injury], from October 3, 2011, through the date of the hearing is supported by sufficient evidence and is therefore affirmed. However, the claimant contends she had disability beginning August 18 through October 2, 2011.

The claimant testified that on the date of injury she was watering plants at the apartment complex where she worked as a manager. While climbing steps the claimant lost her balance. To prevent herself from falling backwards, the claimant grabbed a

railing, which caught a ring she was wearing on her right long finger, and sustained a degloving injury.

The claimant testified she underwent immediate surgery to salvage the finger; however, the surgical procedure was unsuccessful, and on August 19, 2011, the claimant's finger was amputated. The claimant also testified that she has been and continues to be unable to work full duty due to her compensable injury.

In evidence is an operative report dated August 18, 2011. The report notes that an exploration and attempt at artery and nerve repair was conducted but was unsuccessful. The surgeon closed all wounds and kept the claimant in the hospital overnight. The report anticipated a finger amputation. Also in evidence is an operative report dated August 19, 2011, noting an amputation of the claimant's right long finger was performed on that same date.

On August 29, 2011, the claimant went to a plastic surgeon for a follow-up appointment. In a record dated that same date, [Dr. C] noted the claimant was doing well at that time and noted he would remove the sutures in about 10 days. However, in a medical report dated September 28, 2011, Dr. C noted the claimant had only received coverage for six sessions of occupational therapy at that point, and that her range of motion (ROM) was still deficient, although she was able to oppose her thumb to other fingers and make about a 60% to 70% complete fist. Dr. C also noted that the claimant told him she would like to return to work and she feels ready to do so. Dr. C released the claimant to work full duty. However, the claimant testified that she did not tell Dr. C she could work full duty, and that if she returned to work she would require the assistance of her daughter to help with her work duties.

An occupational therapy report dated November 9, 2011, notes the claimant could perform light activities but was unable to lift anything with significant weight, and that she had decreased abilities to perform light activities for very long, including writing tasks. The report also notes a number of progress goals for the claimant to retain full use of her right hand.

Dr. P, the designated doctor, examined the claimant on November 29, 2011. In his narrative report dated that same date, Dr. P noted it was necessary to order additional testing to complete his evaluation, and referred the claimant for a functional capacity examination (FCE). An FCE was performed on April 4, 2012. The FCE report noted the claimant's symptoms were described as painful discomfort with sharp burning, throbbing, pounding, nagging, radiating, and numb, and that the symptoms occur constantly and cause substantial diminution in her capacity to carry out her daily activities of living. The FCE status summary stated that the claimant was off of all work duties at that time. Dr. P subsequently examined the claimant on April 13, 2012, to

determine extent of injury and disability. However, Dr. P's opinion that the claimant's disability is a direct result of the work-related injury only covered October 3, 2011, through the date of his examination, because he indicated that was the only time period in question.

[Dr. O] performed a peer review on February 27, 2012. In opining on whether the compensable injury had resolved, Dr. O noted that "[a]ccording to the Official Disability Guidelines dated November 2, 2011, the [claimant] is entitled up to 18 occupational therapy visits over six weeks status post finger amputation" and noted that only 6 occupational therapy visits were provided for review. Dr. O stated the claimant would benefit from additional occupational therapy, up to 18 visits post-operatively, for the finger amputation as per the Official Disability Guidelines dated November 2, 2011. The claimant testified she completed 12 sessions of occupational therapy, 2 sessions per week for six weeks.

The disability issue at the hearing was phrased as "[d]id the claimant have disability resulting from an injury sustained on [date of injury], and if so, for what period(s)?" The hearing officer began disability on October 3, 2011. The hearing officer, in the Background Information section, noted that medical records indicated the claimant "continued to have residual problems, including a loss of grip strength and [ROM];" and that the claimant has not been able to obtain employment since October 3, 2011. There is no explanation why disability began on October 3, 2011, rather than the date of injury or some earlier date than October 3, 2011. However, the evidence established that the claimant has had problems with pain, and a loss of grip strength and ROM since her finger was amputated on August 19, 2011. The evidence also established that the claimant was unable to obtain employment since [date of injury], the date of the compensable injury. Under the facts of this case, the hearing officer's determination that the claimant had disability only from October 3, 2011, through the date of the hearing is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. We therefore reverse that portion of the hearing officer's determination that the claimant had disability from an injury sustained on [date of injury], only from October 3, 2011, through the date of the hearing, and render a new decision that the claimant had disability from her injury of [date of injury], beginning [date of injury]. We affirm the hearing officer's determination that the claimant's period of disability continued through December 3, 2012, the date of the hearing.

## **SUMMARY**

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not include bilateral CTS and Guyon's canal syndrome of the left wrist.

We reverse the hearing officer's determination that the claimant's AWW is \$432.86 and render a new decision that the claimant's AWW is \$441.92.

We reverse that portion of the hearing officer's determination that the claimant had disability from an injury sustained on [date of injury], only from October 3, 2011, and render a new decision that the claimant had disability beginning [date of injury].

We affirm that portion of the hearing officer's determination that the claimant's period of disability ended December 3, 2012, the date of the hearing.

The true corporate name of the insurance carrier is **SERVICE LLOYD'S INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge