

APPEAL NO. 130499  
FILED MAY 6, 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 (CCH) was held on December 17, 2012, with the record closing on January 22, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], does not extend to the diagnosed conditions of a T11-12 disc bulge, an L2-3 disc bulge, an L3-4 disc bulge with bilateral neural foraminal narrowing, or an L4-5 disc bulge with desiccation and loss of disc space height; (2) the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by [Dr. T] on December 10, 2009, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the date of MMI is December 3, 2009; and (4) the appellant/cross-respondent's (claimant) IR is zero percent.

The claimant appealed the hearing officer's determinations of the extent of the compensable injury, MMI and IR. The respondent/cross-appellant (carrier) responded, urging affirmance of the disputed determinations.

The carrier cross-appealed, contending that the hearing officer failed to address the L5-S1 disc bulge when determining the extent of the injury issue. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

The hearing officer's determination that the first certification of MMI and IR assigned by Dr. T on December 10, 2009, did not become final under Section 408.123 and Rule 130.12 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated in part that on [date of injury], the claimant sustained a compensable injury of a low back strain; that Dr. T was the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor on the issues of extent of injury, MMI and IR; and that Dr. T certified that the claimant reached MMI on December 3, 2009, with a zero percent IR. The claimant testified that she felt a pop in her back on [date of injury], as she twisted her upper body after lifting trays of food out of the van, closing the van door, and standing up.

## EXTENT OF INJURY

At the outset of the CCH, the hearing officer stated there were four issues certified by the benefit review officer and proceeded to read the issues contained in the benefit review conference (BRC) report, which was admitted as Hearing Officer Exhibit No. 1. The hearing officer read the extent-of-injury issue as it is recited in the decision and order. The parties agreed that the issue as read was the disputed issue reported out of the BRC. However, a review of the BRC report in evidence reflects the extent-of-injury issue was as follows: Does the compensable injury of [date of injury], extend to the diagnosed conditions of T11-12 disc bulge, L2-3 disc bulge, L3-4 disc bulge with bilateral neural foraminal narrowing, L4-5 disc bulge with desiccation and bilateral neural foraminal narrowing and/or L5-S1 disc bulge with desiccation and loss of disc space height?

The hearing officer in reading the extent-of-injury issue before the parties at the CCH and in reducing the extent-of-injury issue to writing in his decision and order misidentified the condition described at the L4-5 spinal level and left out entirely the condition described for the L5-S1 level.

That portion of the hearing officer's determination that the compensable injury does not extend to a T11-12 disc bulge, an L2-3 disc bulge, and an L3-4 disc bulge with bilateral neural foraminal narrowing is supported by sufficient evidence and is affirmed.

We note that the Request for Designated Doctor (DWC-32) states in part that the disputed injury includes: a 5 mm disc bulge, disc desiccation and mild bilateral neural foraminal narrowing at L4-5 and a 4 mm disc bulge, disc desiccation and mild disc height loss at L5-S1. The MRI in evidence dated September 9, 2009, gives as an impression of the L4-5 level as follows: "[a] 5 mm disc bulge indents the anterior thecal sac mildly narrowing the spinal canal although not considered stenotic. Disc desiccation and mild bilateral neural foraminal narrowing." The same MRI gives the following impression for the L5-S1 level: "[a] 4 mm disc bulge indents the anterior thecal sac and contributes to mild left neural foraminal narrowing. Disc desiccation and mild disc height loss." The parties litigated the extent-of-injury issue as reported out of the BRC report.

Dr. T in his narrative report dated December 3, 2009, stated bulges of the kind demonstrated on the MRI scan have been shown to be degenerative and failed to demonstrate acute pathology. Dr. T opined that the extent of the claimant's injury was a severe lumbar strain.

The hearing officer misidentified the specific condition at issue regarding the L4-5 spinal level and left out the condition at issue for the L5-S1 level of the spine.

Consequently, we reverse that portion of the hearing officer's determination that the compensable injury does not extend to an L4-5 disc bulge with desiccation and loss of disc space height and we reverse the hearing officer's decision regarding extent of injury as being incomplete and remand that portion of the hearing officer's extent of injury to the hearing officer to make a determination of whether the [date of injury], compensable injury extends to L4-5 disc bulge with desiccation and bilateral neural foraminal narrowing and/or L5-S1 disc bulge with desiccation and loss of disc space height.

### **MMI AND IR**

The Appeals Panel has long held that when the issue before the hearing officer is the IR that the extent of injury is a threshold issue. See Appeals Panel Decision (APD) 060170-s, decided March 22, 2006, and APD 090639, decided July 3, 2009. In APD 060170-s, which cited APD 961324, decided August 16, 1996, we stated:

The Appeals Panel has noted in the past that the resolution of a dispute over an IR cannot proceed unless the "threshold" issue of the extent of injury is resolved either by the parties or the hearing officer, even if not expressly raised by the parties. See [APD] 951097, decided August 17, 1995. See also [APD] 941748, decided February 13, 1995.

Because we have reversed and remanded a portion of the extent-of-injury issue, we reverse the hearing officer's determination of MMI and IR.

### **SUMMARY**

We affirm that portion of the hearing officer's determination that the compensable injury does not extend to a T11-12 disc bulge, an L2-3 disc bulge, and an L3-4 disc bulge with bilateral neural foraminal narrowing.

We reverse that portion of the hearing officer's determination that compensable injury does not extend to an L4-5 disc bulge with desiccation and loss of disc space height and we reverse the hearing officer's decision regarding extent of injury as being incomplete and remand that portion of the hearing officer's extent of injury to the hearing officer to make a determination of whether the [date of injury], compensable injury extends to L4-5 disc bulge with desiccation and bilateral neural foraminal narrowing and/or L5-S1 disc bulge with desiccation and loss of disc space height.

We reverse the hearing officer's determination that the date of MMI is December 3, 2009, and the claimant's IR is zero percent and remand the issues of MMI and IR to

the hearing officer for a decision after complete resolution of the disputed extent-of-injury issue.

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 Division, 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON O. WRIGHT, PRESIDENT  
6210 HIGHWAY 290 EAST  
AUSTIN, TEXAS 78723.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Veronica L. Ruberto  
Appeals Judge

---

Carisa Space-Beam  
Appeals Judge