APPEAL NO. 131007
FILED JUNE 3, 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 March 6, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on [date of injury], and that the claimant did not have disability resulting from a compensable injury. The claimant appealed, disputing the hearing officer's determinations that the claimant did not sustain a compensable injury on [date of injury], and did not have disability. The respondent (carrier) responded, urging affirmance of the disputed compensable injury and disability determinations.

DECISION

Reversed and remanded.

The parties stipulated that [Dr. H] was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine return to work, extent of injury, direct result, and to determine whether an injury resulted from the claimed incident. The claimant testified he injured his back carrying aluminum frames up stairs. He testified that he had to twist and hold the frames up to keep from hitting them and when he did the lower part of his back popped. Dr. H initially examined the claimant on June 19, 2012. Dr. H stated that he felt an MRI should be done and that the claimant might benefit from a trial of oral corticosteroids for 10 days to see if this would help reduce any swelling around the nerve roots. Dr. H opined that the claimant could return to work light duty with the restrictions of limited bending, no lifting over 10 pounds, no pushing or pulling over 20 pounds, and no climbing ladders for 3 weeks. Dr. H then stated that he would give an opinion of the extent of the claimant's injury once he received the results of the MRI and that it would be difficult to determine the direct result of the claimed injury until the extent of injury is determined. Dr. H then stated once extent of injury is determined he would be able to address whether there is an injury resulting from the claimed incident.

A letter of clarification was sent to Dr. H on November 28, 2012. In his response, dated December 3, 2012, Dr. H stated in part, "[w]ith regard to the first question whether an injury resulted from the claimed incident on [[date of injury]] the mechanism of injury is consistent with a lumbar sprain/strain." Dr. H additionally stated, "I feel that [the claimant] suffered a lumbar sprain/strain." In the Background Information portion of his decision and order, the hearing officer stated, "[a] designated doctor was appointed in part to determine whether an injury resulted from the claimed incident. But the designated doctor did not address that issue." Although the designated doctor stated in

his response that whether the alleged incident took place as stated by the claimant will need to be determined through the hearing process, he did opine that the mechanism of injury alleged was consistent with a lumbar sprain/strain. The hearing officer did not fully consider the opinion of the designated doctor.

As previously noted, the parties stipulated that Dr. H was appointed in part to determine whether an injury resulted from the claimed incident. 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 § 127.10(g) (Rule 127.10(g)) provides that the report of the designated doctor is given presumptive weight regarding the issue(s) in question the designated doctor was properly appointed to address, unless the preponderance of the evidence is to the contrary. The hearing officer incorrectly stated the designated doctor did not address whether an injury resulted from the claimed incident. Accordingly, we reverse the hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury], and remand the issue of whether the claimant sustained a compensable injury on [date of injury], to consider all of the evidence in the record including the opinion from Dr. H regarding whether an injury resulted from the claimed incident.

The hearing officer found that the claimant's inability to obtain and retain employment at his pre-injury wages was not the result of an injury sustained at work on [date of injury], and determined that the claimant did not have disability resulting from a compensable injury. Because we have reversed the hearing officer's determination that the claimant did not sustain a compensable injury, we reverse the hearing officer's determination that the claimant did not have disability and remand the disability issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to consider all of the evidence in the record, including the opinion from Dr. H regarding whether an injury resulted from the claimed incident and then make a determination whether the claimant sustained a compensable injury on [date of injury]. After the hearing officer makes a determination regarding the compensable injury, he should then make a determination for what period, if any, the claimant had disability resulting from the claimed injury.

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* Appeals Panel Decision 060721, decided June 12, 2006.

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

DAVID C. CUNNINGHAM
2435 NORTH CENTRAL EXPRESSWAY, SUITE 400
RICHARDSON, TEXAS 75080.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge