APPEAL NO. 131996
FILED OCTOBER 10, 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 May 17, 2013, with the record closing on July 3, 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 aggravation of degenerative disc disease resulting in bulging to the L2 through S1, aggravation of degenerative joint disease in the medial compartment and chondromalacia in the right knee, and a tear of the supraspinatus tendon of the right shoulder; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 20, 2012; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant had disability resulting from the compensable injury beginning August 20, 2012, and continuing through March 12, 2013, but not otherwise through the date of the CCH.

The claimant appealed all of the hearing officer's determinations, contending that the hearing officer's determinations were so against the great weight and preponderance of the credible evidence as to be manifestly unjust. The claimant also contended on appeal that stipulation 1.E. contains a typographical error. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the [date of injury], compensable injury "includes sprains/strains to the right shoulder, **left knee** [emphasis added], and lumbar spine."

EXTENT OF INJURY, MMI, AND IR

The hearing officer's determinations that the compensable injury of [date of injury], does not extend to aggravation of degenerative disc disease resulting in bulging to the L2 through S1, aggravation of degenerative joint disease in the medial compartment and chondromalacia in the right knee, and a tear of the supraspinatus tendon of the right shoulder; the claimant reached MMI on August 20, 2012; the claimant's IR is zero percent; and the claimant had disability resulting from the compensable injury beginning August 20, 2012, and continuing through March 12, 2013, but not otherwise through the date of the CCH are supported by sufficient evidence and are affirmed.

STIPULATION 1.E.

The claimant contended on appeal that the parties stipulated at the CCH that the compensable injury includes the right knee sprain/strain, not the left knee sprain/strain as stated in stipulation 1.E., and therefore the hearing officer's decision and order contains a typographical error. The carrier does not discuss the claimant's contention in its response; however, the carrier does note that it accepted a right knee sprain/strain.

In Appeals Panel Decision (APD) 050265, decided March 25, 2005, the carrier contended on appeal that the parties stipulated at the CCH to an incorrect date of MMI by mistake. The Appeals Panel noted that Section 410.166 and 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provide, in part, that an oral agreement of the parties that is preserved in the record is final and binding on the date made. Rule 147.4(d)(1) further provides, in part, that an oral agreement is binding on a carrier through the final conclusion of all matters relating to the claim, whether before the Texas Department of Insurance, Division of Workers' Compensation (Division) or in court, unless set aside by the Division or court on a finding of fraud, newly discovered evidence, or other good and sufficient cause. The Appeals Panel further noted that whether a good and sufficient cause exists is to be determined from the facts as they stand at the time the party seeks to set aside the agreement. APD 950625, decided June 5, 1995. The Appeals Panel reversed and remanded the hearing officer's decision for a determination of whether good cause exists to set aside the parties' stipulation as to the date of MMI.

The parties in this case stipulated on the record that the compensable injury includes a sprain/strain to the left knee as written by the hearing officer in his decision and order. However, the evidence in the record supports the claimant's contention that the carrier accepted a right knee sprain/strain. We reverse the hearing officer's Finding of Fact No. 1.E. and we remand the hearing officer's decision for a determination of whether good cause exists to set aside the parties' stipulation that the compensable injury extends to a left knee sprain/strain. If good cause is found to exist, the hearing officer should receive a new stipulation as to whether the compensable injury extends to either a right knee or a left knee sprain/strain.

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 **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge