

APPEAL NO. 132952
FILED FEBRUARY 18, 2014

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 November 12, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) did have disability resulting from the injury sustained on [date of injury], beginning October 3, 2012, and continuing through the date of the CCH; (2) the compensable injury of [date of injury], does not extend to the L4-5 herniated nucleus pulposus (HNP) with nerve impingement, L4 and L5 left-sided radiculopathy, left neuralgia, neuritis, radiculitis, and thoracic sprain/strain; (3) the claimant reached maximum medical improvement (MMI) on October 2, 2012; and (4) the claimant's impairment rating (IR) is five percent. We note that the hearing officer incorrectly listed [Docket No. 1] in the docket number of his decision and order rather than the correct [Docket No. 2].

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, and IR. The claimant argues that the hearing officer incorrectly noted in his decision and order that the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for extent of injury determined that the disputed conditions were not related to the compensable injury. The claimant argues that the evidence established that the disputed conditions extended to the compensable injury. Additionally, the claimant argued that because the compensable injury extended to the disputed conditions the claimant has not reached MMI and therefore cannot yet be assigned an IR. The respondent (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

The hearing officer's determination that the claimant did have disability resulting from the injury sustained on [date of injury], beginning October 3, 2012, and continuing through the date of the CCH was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded for reconstruction of the record.

The parties stipulated that: (1) the claimant sustained a compensable injury, in the form of a lumbar spine strain on [date of injury]; (2) the Division-selected designated doctor to determine MMI, IR, and return to work is [Dr. B]; Dr. B certified that the claimant reached MMI on October 2, 2012, with a five percent IR and that the claimant

could return to full-duty work on September 24, 2012; (3) [Dr. T] referral doctor, certified that the claimant had not reached MMI; and (4) post-designated doctor required medical examination doctor, [Dr. N] certified that the claimant reached MMI on October 2, 2012, with a five percent IR. We note that the hearing officer's decision includes a stipulation that the designated doctor appointed for extent of injury was [Dr. G] and he determined that the claimant's compensable injury was a lumbar sprain/strain. However, a review of the available record reflects that the parties could not agree on the conditions Dr. G determined were part of the claimant's compensable injury.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. The appeal file contains one compact disc (CD). The hearing officer lists two witnesses as having testified during the CCH in his Decision and Order: the claimant and Dr. N. The self insured's attorney references Dr. N's testimony during his closing argument and while making closing remarks the hearing officer stated he would consider both the testimony of the claimant and Dr. N in addition to the documentary exhibits in reaching his decision on the disputed issues. However, during the recording of the CCH the parties unsuccessfully attempted to reach Dr. N and then stated they were going off the record. When the CD resumed recording the claimant's attorney had begun her closing argument. The CD does not contain any of Dr. N's testimony. Consequently, a full review of the record could not be completed. The file indicates that there was no court reporter and the file does not contain a transcript or a tape recording of the CCH proceeding. Accordingly, we reverse and remand the issues of extent of injury, MMI, and IR to the hearing officer for reconstruction of the CCH record. See Appeals Panel Decision (APD) 060353, decided April 12, 2006.

We note that the hearing officer stated in his Background Information that Dr. G determined that the disputed conditions were not related to the compensable injury and found that the determination of the designated doctor regarding the extent of the compensable injury is supported by the preponderance of the evidence. In evidence is a report from Dr. G dated April 2, 2013, in which he stated in part the following: [i]t is my opinion [the claimant] was involved in a job related injury on [[date of injury]], where she sustained injury to the extent of L4-5 disc herniation with nerve impingement along with her soft tissue lumbar sprain/strain as a result of her work related incident."

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 [**a governmental entity**] and the name and address of its registered agent for service of process is

[DR]
[ADDRESS]
[CITY], TEXAS [ZIP CODE].

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge