

APPEAL NO. 162020  
FILED DECEMBER 6, 2016

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 August 18, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the compensable injury of (date of injury), extends to a left knee medial collateral ligament (MCL) tear and a left knee medial meniscus tear and the respondent/cross-appellant (claimant) had disability resulting from the compensable injury beginning on February 4, 2016 and continuing through March 4, 2016, but did not have disability beginning on January 18, 2016 and continuing through February 3, 2016, and did not have disability beginning on March 5, 2016, and continuing through the date of the CCH.

The appellant/cross-respondent (carrier) appealed the hearing officer's determinations that the compensable injury of (date of injury), extends to a left knee MCL tear and a left knee medial meniscus tear; and that the claimant had disability beginning on February 4, 2016 and continuing through March 4, 2016, arguing that such determinations are contrary to the evidence. The claimant responded, urging affirmance of the hearing officer's extent of injury and partial disability determinations.

The claimant appealed the hearing officer's determinations that the claimant did not have disability resulting from the compensable injury beginning on March 5, 2016, and continuing through the date of the CCH because she abandoned medical treatment, arguing that the hearing officer based such determination on the wrong legal standard. The carrier urged affirmance of the hearing officer's finding of no disability for the period beginning March 5, 2016, and continuing through the date of the CCH citing a lack of medical evidence supporting disability for this period and arguing credibility of the claimant's testimony.

### DECISION

Affirmed in part and reversed and remanded in part.

The claimant who was washing dishes on (date of injury), was injured on such date when she slipped in water on the floor and nearly fell sustaining an injury to her knees. Although not included as a finding of fact in the Decision and Order, the parties stipulated on the record that the claimant sustained a compensable injury on (date of injury), that included bilateral knee sprains/strains.

### EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), extends to a left knee MCL tear and a left knee medial meniscus tear is supported by sufficient evidence and is affirmed.

## **DISABILITY**

Section 401.011(16) defines disability as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. The hearing officer's determination that the claimant did not have disability for the period beginning on January 18, 2016, and continuing through February 3, 2016, is supported by sufficient evidence and is affirmed. We note that in the Discussion section of her decision, the hearing officer wrote "the hearing officer determines that [the] [c]laimant had disability from January 18, 2016, and continuing through March 4, 2016." This statement is clearly a mistake as it conflicts with other statements in the Discussion section and the hearing officer's finding of fact and conclusion of law that the claimant did not have disability for the period beginning on January 18, 2016, and continuing through February 3, 2016, which determination, as mentioned above, is supported by the evidence.

The hearing officer's determination that the claimant had disability for the period beginning on February 4, 2016, and continuing through March 4, 2016, is supported by sufficient evidence and is affirmed.

The hearing officer determined that the claimant did not have disability from March 5, 2016, and continuing through the date of the hearing "because she abandoned her treatment." The hearing officer mentioned no considerations upon which her finding regarding disability for this time period was based other than the claimant's abandonment of medical treatment. The hearing officer's determination is legally incorrect. There is no provision in the 1989 Act or Texas Department of Insurance, Division of Workers' Compensation (Division) rules for disability to be terminated based on abandonment of medical treatment. See Appeals Panel Decision (APD) 051731, decided September 12, 2005. We accordingly reverse the hearing officer's determination that the claimant did not have disability beginning on March 5, 2016, and continuing through August 18, 2016, the date of the CCH and remand the issue of the disability for such period to the hearing officer for further action consistent with this decision.

## **SUMMARY**

We affirm the hearing officer's determination that the compensable injury of (date of injury), extends to a left knee MCL tear and a left knee medial meniscus tear

We affirm the hearing officer's determination that the claimant had disability resulting from the compensable injury beginning on February 4, 2016 and continuing through March 4, 2016.

We affirm the hearing officer's determination that the claimant did not have disability resulting from the compensable injury beginning on January 18, and continuing through February 3, 2016.

We reverse the hearing officer's decision that the claimant did not have disability beginning on March 5, 2016, and continuing through the date of the CCH, and remand the issue of disability for such period to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand, the hearing officer is to apply the correct legal standard to determine whether or not the claimant had disability beginning on March 5, 2016, and continuing through August 18, 2016, the date of the CCH. The hearing officer is to make findings of fact, conclusions of law, and a decision regarding the issue of disability for such period that is consistent with this decision. The hearing officer is not to consider additional evidence on remand.

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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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K. Eugene Kraft  
Appeals Judge

CONCUR

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge