

APPEAL NO. 040150-s
FILED MARCH 8, 2004

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on July 1, 2003. That hearing officer decided that: (1) the _____, compensable injury of appellant (claimant) does not extend to include claimant's tremor or movement disorder; (2) claimant is not entitled to supplemental income benefits (SIBs) for the third, fourth, and fifth quarters; and (3) respondent (carrier) did not waive the right to contest compensability of the claimed injury by not timely contesting the extent of injury. Claimant appealed all three adverse determinations. Carrier responded, urging affirmance. The Appeals Panel reversed and remanded the case because the second tape was inaudible. Carrier was able to have a transcription of the second tape made even though it had been recorded at a very slow speed. Another hearing officer, (hearing officer), reviewed the tapes and transcription of the second tape and determined that: (1) claimant's _____, compensable injury does not extend to include claimant's tremor or movement disorder; (2) claimant is not entitled to SIBs for the third, fourth, and fifth quarters; and (3) carrier did not waive the right to contest compensability of the claimed injury by not timely contesting the extent of injury. No additional hearing was held. Claimant again appealed these determinations and carrier again responded, urging affirmance.

DECISION

We reverse and render.

Claimant contends the hearing officer erred in determining that carrier did not waive the right to contest compensability of the claimed injury.¹ Claimant asserts that carrier waited too late to contend that the compensable injury does not extend to the tremor or movement disorder (tremor disorder). Claimant complains that the impairment rating (IR) included impairment for the tremor disorder, so carrier could not now raise extent since the first SIBs quarter had already expired. Claimant cites Rule 130.102(g), which concerns maximum medical improvement (MMI) and IR disputes, and states:

If there is no pending dispute regarding the date of [MMI] or the [IR] prior to the expiration of the first quarter [of SIBs], the date of [MMI] and the [IR] shall be final and binding.

Claimant also cites Texas Workers' Compensation Commission Appeal No. 023008, decided January 7, 2003, in support of its contention. We agree that carrier cannot now raise extent of injury because the first quarter of SIBs has ended. The IR in this case was final and binding at the end of the first SIBs quarter pursuant to Rule 130.102(g).

¹ This case did not involve carrier waiver pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(a) (Rule 124.3(a)). Carrier's liability was not established by carrier waiver.

Rule 130.1(c)(1) states that an IR is the percentage of permanent impairment of the whole body resulting from the *current compensable injury*. Section 401.011(24) defines IR as the percentage of permanent impairment of the whole body *resulting from a compensable injury*. Therefore, considering the definition of IR, we conclude that the IR was for the compensable injury and, thus, any injured body part or condition rated is included in the compensable injury under the facts of this case. Once the IR then became final pursuant to Rule 130.102(g), what was included in the underlying compensable injury was established. Because the 53% IR included the tremor disorder and the IR was not challenged before the expiration of first quarter SIBs, the tremor disorder is included in the compensable injury.

Our holding is limited to cases involving: (1) challenges to extent of injury where carrier contends the compensable injury does not extend to a condition or body part; (2) an IR that includes impairment for that condition or body part; and (3) an IR that has not been challenged before the first quarter SIBs period expired. We acknowledge that injuries can evolve over time and that claimants may claim that additional injuries or conditions are compensable even after the expiration of the first quarter of SIBs. Our holding should not be construed as limiting claimants from expanding on what is included in the compensable injury, and we do not mean to state that claimants may not prevail in such cases. See *generally*, Texas Workers' Compensation Commission Appeal No. 991369, decided August 12, 1999; Texas Workers' Compensation Commission Appeal No. 962006, decided November 20, 1996.

Claimant contends the hearing officer erred in determining that the injury does not extend to the tremor disorder. Given our holding as stated above, we agree. We hold that the hearing officer erred in determining that the injury does not include the tremor disorder in this case and we render a decision that the injury includes the tremor disorder.

Claimant contends the hearing officer erred in determining that she is not entitled to SIBs for the third, fourth, and fifth quarters. In his decision, the hearing officer stated that claimant's "inability to work is due to the tremor disorder." The hearing officer further said that the fact that the tremor disorder is not compensable is the reason why claimant failed to prove she was entitled to SIBs. The hearing officer's findings conflict with his discussion in the decision and order. It appears that the hearing officer thought that since the tremor disorder is not included in the compensable injury, claimant is considered to have an ability to work for SIBs purposes and was required to look for work. Because we have determined that the tremor disorder is part of the compensable injury, we conclude that the hearing officer erred in determining that claimant is not entitled to SIBs.

We reverse that part of the hearing officer's decision and order that determined that carrier did not waive the right to contest compensability of the claimed injury by not timely contesting the extent of injury and we render a decision that carrier waited too late to contest the compensability of the claimed tremor or movement disorder. We reverse that part of the hearing officer's decision and order that determined that the

_____, compensable injury does not extend to include claimant's tremor or movement disorder and we render a decision that the _____, compensable injury extends to include claimant's tremor or movement disorder. We reverse that part of the hearing officer's decision and order that determine that claimant is not entitled to SIBs for the third, fourth, and fifth quarters and we render a decision that claimant is entitled to SIBs for the third, fourth, and fifth quarters.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary Kilgore
Appeals Judge