

APPEAL NO. 051028-s
FILED JUNE 9, 2005

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 March 28, 2005. The hearing officer resolved the disputed issues by deciding that the compensable injury extends to include bowel and bladder dysfunction (urinary incontinence and sensory deficiency) and erectile dysfunction; and that the respondent (claimant) did not waive his right to the extent of his injury for bowel, bladder, and sexual dysfunction. The appellant (carrier) appealed, arguing that the claimant failed to provide evidence that the extent of injury conditions in dispute are related to his compensable injury by means of a reasonable degree of medical probability. The carrier additionally argues that the waiver determination was in error, relying on Texas Workers' Compensation Commission Appeal No. 040150-s, decided March 8, 2004, and a theory of equitable waiver. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, which included "at least his lumbar spine, cervical spine, and left rotator cuff..." and that the claimant reached maximum medical improvement (MMI) on July 20, 2002, per the designated doctor, with a 21% impairment rating (IR). The evidence reflects that the 21% IR includes impairment assessed for the cervical spine, lumbar spine, and left shoulder.

WAIVER

The carrier contends that it was error for the hearing officer to have found that the claimant did not waive his right to the extent of his injury for bowel, bladder, and sexual dysfunction because the compensable injury, as defined by the IR, did not include these conditions and they were known as far back as 2000, "according to the claimant and the hearing officer." The carrier argues that the hearing officer misapplied both Appeal No. 040150-s and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(g) (Rule 130.102(g)).

In Appeal No. 040150-s, the Appeals Panel held that pursuant to Rule 130.102(g) a carrier waived the right to dispute the extent of injury where: (1) the carrier contends that 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) the IR has not been challenged before the first supplemental income benefits (SIBs) quarter has expired. The hearing officer correctly noted that the holding in Appeal No. 040150-s was expressly limited and specifically stated that the holding should not be construed as

limiting claimants from expanding on what is included in the compensable injury. The carrier represents in its appeal that Appeal No. 040150-s is currently pending before a district court and one of the arguments being made, “and has been well received by the District Court Judge,” is that the Appeals Panel is treating the parties differently with respect to the application of Rule 130.102(g). We disagree. Rule 130.102(g) provides that if there is no pending dispute regarding the date of MMI or the IR prior to the expiration of the first quarter [of supplemental income benefits (SIBs)], the date of the MMI and the IR shall be final and binding. The fact that the date of MMI and IR become final under these circumstances applies equally to the claimant and the carrier. A determination that the compensable injury extends to various other conditions not included in the IR will not allow the claimant to then challenge the date of MMI and/or the IR if there was no pending dispute regarding MMI and/or IR prior to the expiration of the first quarter of SIBs. However, once the first quarter of SIBs has expired and there has been no challenge of the MMI date and/or the IR, the claimant is not precluded from alleging that the compensable injury extends to include other conditions not included in the IR. As acknowledged in Appeal No. 040150-s, injuries can evolve over time and claimants may claim that additional injuries or conditions are compensable even after the expiration of the first quarter of SIBs. To hold otherwise would deprive claimants of rights specifically afforded to them under the 1989 Act. As stated in Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref’d n.r.e. per curiam, 432 S.W.2d 515):

The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefore, causes other injuries which render the employee incapable of work.

The carrier also argues that “equitable waiver” should be applied in this case, citing Texas Workers’ Compensation Commission Appeal No. 001701, decided September 1, 2000. The carrier’s reliance on this case to support their argument is misplaced. The carrier acknowledges that the cited case noted that a carrier may waive the right to dispute extent of injury if it does not activate this dispute prior to a proceeding when IR is an issue and the designated doctor has included a disputed region as part of his IR. The carrier argues that “according to the claimant and the hearing officer,” the claimant’s sexual dysfunction, bowel and bladder problems were known as early as October of 2000. The claimant testified that his physicians told him that surgery to his back and neck may resolve these problems, and after surgery, told him that time may resolve these problems. The claimant testified that time has not resolved these problems. The various other cases cited by the carrier discuss when parties may waive the right to dispute the IR are not applicable to the instant case.

Rule 130.1(c)(1) provides that an IR is the percentage of permanent impairment of the whole body resulting from the current compensable injury. By definition if impairment is assessed for a body part or condition it is considered to be part of the compensable injury and if there is a dispute as to whether a specific body part or

condition is part of the compensable injury, it should be raised prior to the certification of MMI and IR becoming final and binding.

EXTENT OF INJURY

Conflicting evidence was presented at the CCH on the disputed issue of extent of injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the appealed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge