

APPEAL NO. 090761
FILED JULY 13, 2009

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 April 27, 2009. The hearing officer resolved the disputed issue by deciding that the _____, compensable injury extends to a cervical spine sprain/strain but does not extend to the appellant's (claimant) "left thumb/wrist," "cervical spine herniated nucleus pulposus (HNP) at L3-4 and L5-S1, lumbar spine bulge at L4-5 and lumbar radiculopathy." The claimant appealed the hearing officer's determinations that the compensable injury did not extend to the conditions mentioned above and also noted that the issue reported out of the benefit review conference (BRC) included other conditions not addressed by the hearing officer. The claimant argues that his failure to address the entire issue "negates the determination of the hearing officer." The respondent (carrier) responded, urging affirmance. The carrier acknowledged that the issue reported out of the BRC differed from the extent-of-injury issue decided by the hearing officer. The carrier noted that both parties agreed to the issue as stated by the hearing officer at the CCH and no objections were raised regarding the conditions omitted from the extent-of-injury issue reported out of the BRC. Therefore, the carrier contends that the omission of the conditions listed in the BRC report would have no bearing on the result of the decision and order.

DECISION

Affirmed in part, reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on _____, to at least her right dorsal foot, left mandible, right arm and right middle finger. At issue before the hearing officer was the extent of the claimant's injury.

The hearing officer's decision that the compensable injury of _____, extends to a cervical spine sprain/strain is supported by sufficient evidence and is affirmed. The hearing officer's decision that the compensable injury does not extend to the claimant's "left thumb/wrist," lumbar spine bulge at L4-5 and lumbar radiculopathy is supported by sufficient evidence and is affirmed.

In evidence was the BRC report which stated that the disputed extent-of-injury issue was as follows: "[d]oes the compensable injury of _____ extend to include the left thumb/wrist, cervical spine sprain/strain, cervical spine [HNP] at C4-5, cervical spine bulges at C3-4 and C5-6, cervical radiculopathy, lumbar spine sprain/strain, lumbar [HNP] at L3-4 and L5-S1, lumbar spine bulge at L4-5 and lumbar radiculopathy?" A review of the record reflects that the hearing officer stated at the CCH that the extent-of-injury issue reported out of the BRC was as follows: "[d]oes the compensable injury of _____ extend to include the left thumb/wrist, cervical spine sprain/strain, cervical spine [HNP] at L3-4 and L5-S1, lumbar spine bulge at L4-5

and lumbar radiculopathy?” The hearing officer made findings of fact, conclusions of law and a decision based on the issue that he read into the record. However, the hearing officer did not correctly state the extent-of-injury issue reported out of the BRC. The carrier correctly noted that neither party objected to the hearing officer’s recitation of the issue; however, the record does not indicate that the parties agreed to modify the issue as stated in the BRC report and both parties referenced cervical and lumbar conditions throughout the CCH and the evidence presented at the CCH addresses the extent-of-injury conditions specified in the BRC report.

The hearing officer failed to make findings of fact, conclusions of law, or a decision regarding whether the compensable injury of _____, extends to a cervical spine HNP at C4-5, cervical spine bulges at C3-4 and C5-6, cervical radiculopathy, lumbar spine sprain/strain, or lumbar HNP at L3-4 and L5-S1. We note that the hearing officer did make a finding regarding cervical spine HNP at L3-4 and L5-S1. However, the levels noted by the hearing officer were lumbar spine levels despite his reference to the cervical spine so it is unclear whether or not the hearing officer was making a determination of the cervical spine HNP in issue (C4-5) or the lumbar spine HNP levels as stated (L3-4 and L5-S1).

The hearing officer erred in failing to address all of the extent-of-injury conditions as stated in the issue reported out of the BRC report. Accordingly, we reverse the hearing officer’s decision as being incomplete and remand the case for the hearing officer to consider and make findings of fact, conclusions of law, and a decision on whether the compensable injury of _____, extends to a cervical spine HNP at C4-5, cervical spine bulges at C3-4 and C5-6, cervical radiculopathy, lumbar spine sprain/strain, or lumbar HNP at L3-4 and L5-S1. No additional evidence is required.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury of _____, extends to a cervical spine sprain/strain. We affirm the hearing officer’s determinations that the compensable injury does not extend to the claimant’s “left thumb/wrist,” lumbar spine bulge at L4-5 and lumbar radiculopathy.

We reverse and remand this case for the hearing officer to make a determination on whether the compensable injury of _____, extends to a cervical spine HNP at C4-5, cervical spine bulges at C3-4 and C5-6, cervical radiculopathy, lumbar spine sprain/strain, or lumbar HNP at L3-4 and L5-S1.

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 Texas Department of Insurance, Division of Workers’ Compensation, 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 Appeals Panel Decision 060721, decided June 12, 2006.

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

**CORPORATION SERVICE COMPANY
CSC-LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge