

APPEAL NUMBER 94947  
FILED AUGUST 31, 1994

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 14, 1994, a contested case hearing was held in (City), Texas, with (hearing officer) presiding as hearing officer. With respect to the three issues before her, the hearing officer determined: (1) that respondent's (claimant) compensable injury was not a producing cause of his current neck and shoulder injury; (2) that claimant reached maximum medical improvement (MMI) on April 6, 1994; and, (3) that his impairment rating (IR) is 11%, in accordance with the report of the Texas Workers' Compensation Commission (Commission) selected designated doctor. Appellant (carrier) requests review of the IR only and argues that the hearing officer's decision is inconsistent on its face, in that it adopts the IR of the designated doctor, which includes a rating for the thoracic and cervical spine, despite her finding that the claimant did not sustain his burden of proving that his thoracic and cervical problems resulted from the compensable injury. Claimant did not file either an appeal or a response to the carrier's appeal and the time for doing so has passed. See Section 410.202.

DECISION

We affirm in part and reverse and remand in part.

It is undisputed that on \_\_\_\_\_, claimant was working as a meter reader for Volt Technical Services, when he slipped on some mud accumulated on the sidewalk and fell backwards injuring his lower back. Initially, claimant began treating with Dr. S. Dr. S prescribed pain medication and started claimant on physical therapy. In late July or early August 1993, claimant asserts that while he was working on a weight machine in physical therapy, he felt pain between his shoulder blades and up into his neck. He testified that the pain was in a location where he had never had pain before. Claimant further testified that about two weeks later the pain between his shoulder blades and in his neck became more severe while he was cutting grass. He testified that when he turned his head to "pop" his neck, the pain intensified, and that it has remained constant since that time. Claimant's medical records from his treating doctor and therapists indicate that claimant's cervical and thoracic pain began when he cut the lawn. None of the medical records reference an injury in therapy.

Claimant was examined at the request of the carrier by Dr. P. Dr. P certified that claimant reached MMI on December 15, 1993, with an IR of zero percent. Claimant disputed Dr. P's MMI date and his IR. Dr. K was selected by the Commission as the designated doctor. Dr. K certified that claimant reached MMI on April 6, 1994, with an IR of 11%, comprised of five percent for the lumbar spine, two percent for the thoracic spine, and four percent for the cervical spine.

Claimant did not appeal the hearing officer's determination that his compensable injury was not the producing cause of his cervical and thoracic injuries. That determination

has become final pursuant to Section 410.169. See also Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)). Therefore, in considering the carrier's appeal, we must begin from the proposition that the compensable injury does not extend to the thoracic or cervical spine. That said, it is apparent that the hearing officer's decision is erroneous. Dr. K clearly provides separate ratings for the lumbar, thoracic and cervical spine; thus, his total IR includes ratings for injuries specifically determined not to be part of the compensable injury in this case. Although Sections 408.122(b) and 408.125(e) provide that the designated doctor's report is to be given presumptive weight unless the great weight of other medical evidence is contrary, it is fundamental that the IR is to include a rating only for the compensable injury. Sections 401.011(23) and (24). Therefore, we reverse that part of the decision and order of the hearing officer which found claimant's IR rating to be 11%, and remand this case to the hearing officer to determine the claimant's correct whole body IR in light of her determination of the extent of the compensable injury.

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 the request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge