

APPEAL NO. 011984
FILED SEPTEMBER 25, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 25, 2001, with the record closing August 3, 2001. The hearing officer resolved the disputed issues by determining that the respondent's (claimant) compensable injury of _____, to the "fifth finger of his left hand" was a producing cause of the radial collateral ligament tear to the fifth finger after _____, and that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. H did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)).

The appellant (carrier) appealed, contending that the claimant's compensable injury had completely healed, that the claimant returned to work full duty (working overtime), citing medical evidence, and that the claimant must have had a new intervening accident. The carrier also asserts that Dr. H's certification of MMI and IR has become final as it was not disputed within 90 days of written receipt and that there was no exception of misdiagnosis or error to preclude the first certification of MMI/IR from becoming final. The claimant responds, urging affirmance.

DECISION

Affirmed.

It was stipulated that the claimant sustained a crush injury to the fifth finger (little finger) of his left hand on _____, when it was mashed moving a machine. The claimant was seen in an emergency room and subsequently began treating with Dr. G for a fracture of the proximal phalanx of the left little finger. The claimant had two surgeries on the little finger with the second being on August 22, 2000. The claimant then had physical therapy until October 2, 2000. Dr. G returned the claimant to full duty on October 18, 2000, and referred the claimant to Dr. H for an IR. Dr. H, in a Report of Medical Evaluation (TWCC-69) and narrative dated October 25, 2000, certified MMI on October 18, 2000, with a 1% IR. On October 29, 2000, Dr. G agreed with Dr. H's assessment of MMI and IR.

The claimant returned to work on October 18, 2000. The medical evidence is conflicting regarding the status of the left little finger. In his October 25, 2000, report, Dr. H writes:

The patient states he has no pain. He just complains of swelling and soreness sometimes. "I cannot grip anything. I do have weakness at my hand."

Progress notes of Dr. G in December 2000 state that the claimant has “some PIP joint stiffness” and a note of January 22, 2001, that the claimant “is doing very well.” In a _____ office note, Dr. G states that the claimant “was at work lifting boxes during a moving assignment and felt pain in the left fifth digit with swelling . . . I suspect radial collateral ligament tear.” An MRI performed on February 23, 2001, had the impression of “atrophic and most likely post fracture changes in the proximal phalanx of the left fifth digit” A radiologist who performed testing was of the opinion that the diagnostic findings “are probably related to previous trauma.” The claimant had additional surgery to repair ulnar and radial collateral ligament tears of the left little finger. The claimant contends that the compensable _____, injury was a producing cause of the radial collateral ligament tear. The carrier contends that the claimant had returned to full duty and had worked until January 31, 2001, when he was terminated for unrelated reasons, and that the claimant had sustained a new injury on or about _____.

On the extent-of-injury issue, the medical evidence is conflicting. The hearing officer commented:

The medical evidence conflicted, but I find that after careful review of the medical evidence, based upon a reading of all of [Dr. G's] reports, the report of [Dr. H] and the MRI's, preponderate in Claimant's favor that the Claimant's compensable injury of _____ is a producing cause of the radial collateral ligament tear to the fifth finger after _____.

There was conflicting evidence. The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination on the issues is not against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Regarding finality of the first IR, the parties stipulated that Dr. H's report was the first certification of MMI and IR assigned to the claimant. There is no dispute that the claimant received written notice of that report by EES-19 letter dated November 2, 2000, and Dr. H's report was not disputed within 90 days. Rule 130.5(e), as amended effective March 13, 2000, provides that the first certification of MMI and IR assigned to an employee is final if it is not disputed within 90 days after written notification is sent by the Texas Workers' Compensation Commission “unless based on compelling medical evidence the certification is invalid because of: . . . (2) a clear mis-diagnosis or a previously undiagnosed condition[.]” The hearing officer found that the claimant's collateral ligament tear of the fifth finger had not yet been diagnosed when Dr. H assessed his certification of MMI/IR. The hearing officer found that was “a clear misdiagnosis and a previously undiagnosed condition.” The carrier contends that the claimant had returned to work, that there was no misdiagnosis, and that Dr. H's first certification of MMI and IR had become final. We hold that the hearing officer did not err in applying the exception of a previously undiagnosed condition of Rule 130.5(e) and the hearing officer's determinations on this issue are supported by the evidence and are not against the great weight and preponderance of the evidence.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND** (effective September 1, 2001, the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**) and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge