

APPEAL NO. 032171
FILED SEPTEMBER 23, 2003

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 14, 2003. With respect to the issues before her, the hearing officer determined that the great weight of the other medical evidence is contrary to the report of the designated doctor; thus, she further determined that his report is not entitled to presumptive weight; that the respondent (claimant) has not reached maximum medical improvement (MMI); and that an impairment rating (IR) cannot be assigned because the claimant has not reached MMI. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the great weight of the other evidence is contrary to the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission) and asks that we render a decision that the claimant reached MMI on September 5, 2002, with a 10% IR as certified by the designated doctor. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____, to his left knee in the form of a medical meniscus tear. On June 17, 2002, Dr. M performed arthroscopic surgery on the claimant's left knee. On September 5, 2002, Dr. G, the designated doctor selected by the Commission, examined the claimant and certified that he reached MMI on that date with a 10% IR. In progress notes dated November 7, 2002, Dr. M stated that the claimant "is definitely at MMI" and "recommended that [claimant] be released to regular duty, as there is not much to offer from an orthopedic standpoint." Dr. M's January 28, 2003, progress notes reflect complaints of continued knee pain that has "never gotten better" and request an MRI to rule out a recurrent medical meniscal tear. On February 25, 2003, the claimant had an MRI of the left knee, which Dr. M interpreted as "essentially negative." In March 4 and March 13, 2003, reports, Dr. M diagnosed left knee posttraumatic degenerative joint disease and injected the claimant's left knee with Synvisc. The claimant returned to Dr. M on May 6, 2003, at which time Dr. M stated that examination of the left knee revealed "marked tenderness" and "changes in color and moderate swelling." Dr. M's clinic impression on May 6, 2003, was "rule out [reflex sympathetic dystrophy] RSD of the left knee." In a June 3, 2003, report, Dr. M took issue with the designated doctor's certification of MMI and IR, maintaining that he believes that the claimant has RSD, that the claimant needs and RSD block "for diagnostic and treatment purposes," and that the claimant is not at MMI.

In her discussion, the hearing officer stated that the issue of whether the claimant's compensable injury extends to left knee RSD "needs to be settled before a determination of [MMI] and [IR] can be made." She further stated "[t]herefore, the great

weight of the other evidence is contrary to the report of the designated doctor” and she concluded that the claimant “is not yet at [MMI] and as such has no [IR].” We do not disagree with the hearing officer’s assessment that the issue of whether the claimant’s compensable injury extends to left knee RSD has to be resolved before a determination of MMI and IR can be made in this instance. Where we depart from the hearing officer is in determining that the great weight of the other medical evidence is contrary to the designated doctor’s certification of MMI and IR, and her determination that the claimant is not at MMI and thus that an IR cannot be assessed. We have previously recognized that an extent-of-injury issue is a threshold issue that must be resolved before issues of MMI and IR can be resolved and that the resolution of the MMI and IR issues will flow from the resolution of the extent issue. See Texas Workers' Compensation Commission Appeal No. 000242, decided March 23, 2000; Texas Workers' Compensation Commission Appeal No. 992030, decided October 29, 1999; and Texas Workers' Compensation Commission Appeal No. 980996, decided June 22, 1998. However, it was incumbent upon the hearing officer to resolve the extent-of-injury issue and then to address the issues of MMI and IR. Accordingly, we reverse the hearing officer’s determinations that the claimant has not reached MMI and that he does not have an IR and remand this case for a resolution of whether the claimant’s compensable injury extends to left knee RSD. Once the hearing officer resolves that issue, the hearing officer should reconsider the issues of MMI and IR. If the hearing officer determines that the compensable injury does not extend to RSD, then the hearing officer can determine if the great weight of the other medical evidence is contrary to the designated doctor’s certification without returning the claimant to the designated doctors for a reexamination. However, if the RSD is determined to be part of the compensable injury, then the designated doctor will need to reexamine the claimant in order to consider the RSD in determining whether the claimant has reached MMI and assessing an IR.

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 a new decision must file a request for review no later than 15 days after the date on which such new decision is received from the Commission’s Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2000, to exclude Saturdays, 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 Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge