

APPEAL NO. 042713  
FILED DECEMBER 9, 2004

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 September 28, 2004. The appellant/cross-respondent (claimant) appeals the hearing officer's determinations that his compensable right knee injury of \_\_\_\_\_, does not include an anterior cruciate ligament (ACL) tear or a posterior lateral meniscus tear, and that he has not had disability. The respondent/cross-appellant (carrier) appeals the hearing officer's determinations that the claimant is allowed to change treating doctor's to Dr. P because Dr. P is actually the claimant's first choice of treating doctors, and that the date of maximum medical improvement (MMI) and impairment rating (IR) cannot be determined pending the Texas Workers' Compensation Commission's (Commission) choice of a designated doctor to certify MMI and IR. The carrier responded to the claimant's appeal. No response to the carrier's appeal was received from the claimant.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant sustained a compensable injury on \_\_\_\_\_. It is undisputed that the compensable injury includes an injury to his right knee. The employer sent the claimant to Dr. H. The claimant treated with Dr. H for approximately 11 days. In a report dated June 2, 2003, Dr. H certified that the claimant reached MMI on June 2, 2003, with a zero percent IR. The Commission approved the claimant's request to change treating doctors to Dr. P. An MRI of the claimant's right knee was done in March 2004. The claimant requested that a designated doctor be appointed to determine MMI and IR. There was no evidence that the Commission had appointed a designated doctor as of the date of the CCH.

The benefit review conference (BRC) report stated that the disability issue was whether the claimant had disability from the compensable injury from "March 10, 1994," through the present. The hearing officer reformed the date in the disability issue to March 10, 2004, but no one knew why that date was used, other than speculating that an MRI was done in March 2004. Our review of the record reflects that the parties actually litigated whether the claimant had disability as a result of his compensable injury, and if so, for what period(s). The other issues at the CCH were whether the compensable injury of \_\_\_\_\_, includes a right knee ACL tear and/or a posterior lateral meniscus tear; the MMI date; the IR, and whether the claimant should be allowed to change treating doctors from Dr. H to Dr. P.

**EXTENT, DISABILITY, AND TREATING DOCTOR**

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Although conflicting evidence was presented on the issues of the extent of the compensable injury and disability, we conclude that the hearing officer's determinations that the compensable injury does not include a right knee ACL tear or a posterior lateral meniscus tear, and that the claimant has not had disability 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 hearing officer also did not err in determining the treating doctor issue in favor of the claimant. The hearing officer correctly applied Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(c)(2) (Rule 126.9(c)(2)) in determining that Dr. H was not the claimant's initial choice of treating doctor and that Dr. P is the claimant's initial choice of treating doctor.

### **MMI AND IR**

MMI and IR are listed as unresolved disputed issues in the BRC report and the parties agreed that MMI and IR were disputed issues before the hearing officer. Prior to the CCH, the claimant requested the appointment of a designated doctor. There is no evidence that a designated doctor has been appointed. See Section 408.0041, 408.122, and 408.125 regarding appointment of a designated doctor to resolve MMI and IR disputes. The hearing officer determined that the date of MMI and IR cannot be determined pending the Commission's choice of a designated doctor to certify MMI and IR. The carrier appeals the hearing officer's determination on the issues of MMI and IR and asserts that Dr. H's MMI and IR report should be adopted. Under the recent holding in Albertson's, Inc. v. Ellis, 131 S.W.3d 245 (Tex. App.-Fort Worth 2004, pet. denied), an affirmance of the hearing officer's determination that MMI and IR cannot be determined pending the appointment of a designated doctor would, in essence, be a remand. The court noted in that case that the mere failure of the Appeals Panel to use the word "remand" in its opinion did not make its nonfinal decision (on MMI and IR) final for the purposes of judicial review, and was, in effect, a remand. Accordingly, we reverse the hearing officer's determination that MMI and IR cannot be determined and we remand the MMI and IR issues back to the hearing officer for the hearing officer to have a designated doctor appointed for the purposes of determining MMI and IR and for the hearing officer to make a decision on the MMI and IR issues after affording the parties reasonable opportunity to respond to any report of the designated doctor.

We affirm the hearing officer's determinations on the issues of the extent of the compensable injury, disability, and treating doctor. We reverse the hearing officer's decision on the issues of MMI and IR and we remand the MMI and IR issues to the hearing officer for further consideration and development of the evidence on those issues consistent with this decision.

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 Commission's Division of Hearings, 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.

The true corporate name of the insurance carrier is **TRANSPORTATION 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.**

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Thomas A. Knapp  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge