APPEAL NO. 091354
FILED OCTOBER 29, 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 July 30, 2009. The issues before the hearing officer were:

(1) Does the compensable injury sustained on _____, extend to degenerative disc disease at L5-S1 of the lumbar spine with diffuse disc bulge and bilateral foraminal encroachment?

(2) Did the appellant (claimant) have disability, and if so, for what period?

(3) Did the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. T), the claimant's treating doctor, become final under Section 408.123? (this issue was resolved by stipulation)

(4) Has the claimant reached MMI, and if so, on what date and what is the IR?

(5) Is the claimant entitled to reimbursement of travel expenses for medical treatment at the direction of (Healthcare Provider A), (Healthcare Provider B), (Dr. R), and the providers at (address), (city), Texas (zip code), and if so, in what amount?

The parties resolved the finality issue by stipulating that the first certification of MMI and assigned IR from Dr. T, the claimant's treating doctor, did not become final under Section 408.123.

The hearing officer resolved the remaining disputed issues by determining that: (1) the compensable injury sustained on _____, does not extend to degenerative disc disease at L5-S1 of the lumbar spine with diffuse disc bulge and bilateral foraminal encroachment; (2) the claimant had disability from July 24 through September 8, 2008, but not thereafter through the date of the CCH; (3) the claimant reached MMI on October 7, 2008, with a zero percent IR; and (4) the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of (Healthcare Provider A), (Healthcare Provider B), Dr. R, and the providers at (address), (city), Texas (zip code).

The claimant appealed the hearing officer's extent of injury, MMI, IR and travel reimbursement determinations. Also, the claimant appealed that portion of the hearing officer's disability determination that the claimant did not have disability after September 8, 2008, through the date of the CCH. The respondent (carrier) responded, urging affirmance. That portion of the hearing officer's disability determination that the

claimant had disability from July 24 through September 8, 2008, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part, reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that he fell off a truck and landed on his back at work on _____.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury sustained on _____, does not extend to degenerative disc disease at L5-S1 of the lumbar spine with diffuse disc bulge and bilateral foraminal encroachment is supported by sufficient evidence and is affirmed.

DISABILITY

That portion of the hearing officer's determination that the claimant did not have disability after September 8, 2008, through the date of the CCH is supported by sufficient evidence and is affirmed.

TRAVEL REIMBURSEMENT

The hearing officer's determination that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of (Healthcare Provider A), (Healthcare Provider B), Dr. R, and the providers at (address), (city), Texas (zip code), is supported by sufficient evidence and is affirmed.

MMI AND IR

The hearing officer determined that the claimant reached MMI on October 7, 2008, with a zero percent IR, pursuant to the treating doctor's Report of Medical Evaluation (DWC-69). 28 TEX. ADMIN. CODE § 130.1(d)(1) (Rule 130.1(d)(1)) provides that the certification of MMI and assigning IR for the current compensable injury requires "completion, signing and submission of the [DWC-69] and a narrative report." Rule 130.1(d)(1)(B) provides that the narrative report must include the following:

(i) date of the certifying examination;
(ii) date of MMI;
(iii) findings of the certifying examination, including both normal and abnormal findings related to the compensable injury and an

explanation of the analysis performed to find whether MMI was reached;

(iv) narrative history of the medical condition that outlines the course of the injury and correlates the injury to the medical treatment;

(v) current clinical status;

(vi) diagnosis and clinical findings of permanent impairment as stated in subsection (c)(3);

(vii) the edition of the [Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides)] that was used in assigning the [IR] (if the injured employee has permanent impairment); and

(viii) a copy of the authorization if, after September 1, 2003, the doctor received authorization to assign an [IR] and certify MMI by exception granted from the [Texas Department of Insurance, Division of Workers' Compensation (Division)].

The hearing officer erred in determining that the claimant reached MMI on October 7, 2008, with a zero percent IR, pursuant to the treating doctor's DWC-69. The medical report from Dr. T dated October 7, 2008, does not constitute a narrative report because it does not provide: (1) an explanation of the analysis performed to determine MMI (Rule 130.1(d)(1)(B)(iii)); (2) a narrative history of the medical condition that outlines the course of the injury and correlates the injury to the medical treatment (Rule 130.1(d)(1)(B)(iv)); and (3) the specific body parts considered by Dr. T in certifying MMI and assessing impairment (Rule 130.1(d)(1)(B)(vi)). Further, Dr. T's report does not have a description of how the clinical findings related to and compare with the applicable criteria of the AMA Guides. *See* Rule 130.1.

Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors.

(Dr. K), the designated doctor, examined the claimant on February 4, 2009, and certified that the claimant had not reached MMI. The hearing officer found that Dr. K's certification is not supported by a preponderance of the evidence. That finding is supported by a preponderance of the evidence.

The only other certification in evidence is from the required medical examination (RME) doctor, (Dr. H). Dr. H examined the claimant on March 30, 2009, and certified that the claimant reached MMI on October 7, 2008, with a five percent IR, based on a

zero percent IR for the cervical spine and a five percent IR for the lumbar spine (Diagnosis-Related Estimate Lumbosacral Category II) using the AMA Guides. Dr. H noted there is no impairment secondary to loss of motion of the claimant's right elbow. Dr. H's certification of MMI and IR is supported by sufficient evidence and is the only certification which can be adopted.

Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on October 7, 2008, with a zero percent IR, pursuant to Dr. T, the treating doctor, and we render a new decision that the claimant reached MMI on October 7, 2008, with a five percent IR, pursuant to the RME doctor, Dr. H.

SUMMARY

We affirm the hearing officer's determination that the compensable injury sustained on _____, does not extend to degenerative disc disease at L5-S1 of the lumbar spine with diffuse disc bulge and bilateral foraminal encroachment.

We affirm that portion of the hearing officer's determination that the claimant did not have disability after September 8, 2008, through the date of the CCH.

We affirm the hearing officer's determination that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of (Healthcare Provider A), (Healthcare Provider B), Dr. R, and the providers at (address), (city), Texas (zip code).

We reverse the hearing officer's determination that the claimant reached MMI on October 7, 2008, with a zero percent IR, pursuant to Dr. T, the treating doctor, and we render a new decision that the claimant reached MMI on October 7, 2008, with a five percent IR, pursuant to the RME doctor, Dr. H.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232.

_____
Veronica L. Ruberto
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge