

APPEAL NO. 100536
FILED JUNE 18, 2010

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 March 24, 2010. With regard to the three issues before him the hearing officer determined that: the (appellant) claimant reached maximum medical improvement (MMI) on March 12, 2009; the claimant's impairment rating (IR) is five percent; and the compensable injury of _____, includes a disc herniation at C4-5.

The claimant appeals the determinations of MMI and IR contending that he has not reached MMI and therefore the IR is premature. The claimant also appeals the finding that the preponderance of the other medical evidence is not contrary to the opinion of the designated doctor. The respondent (carrier) responds, urging affirmance.

The hearing officer's determination that the compensable injury of _____, includes a disc herniation at C4-5 has not been appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified how he had been instructed to transport material on a four wheeler and how the four wheeler flipped backwards throwing him off and then landing on top of him. The claimant testified that he received injuries to his head, neck, chest, and low back, rib fractures and a right foot contusion. The parties stipulated that (Dr. B) is the designated doctor for issues of MMI, IR and extent of injury.

Dr. B examined the claimant on March 12, 2009, and certified that the claimant reached clinical MMI on that date with a five percent IR. Dr. B noted that the claimant gave "inconsistent effort" at the examination. Dr. B's opinion was that the compensable injury consisted of a lumbar sprain/strain, lumbar disc protrusion, cervical sprain/strain, rib fracture and right foot contusion. Dr. B noted that the claimant indicated that "he is pending injections currently" but did not believe that would make a difference in his MMI or IR. Dr. B's IR consisted of a five percent whole person impairment for Diagnosis-Related Estimate (DRE) Lumbosacral Category II: Minor Impairment under 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); zero percent whole person impairment for DRE Cervicothoracic Category I: Complaints or Symptoms; zero percent whole person impairment for DRE Thoracolumbar Category I: Complaints or Symptoms; zero percent impairment for the right foot (range of motion and neurological testing within normal limits); and zero percent impairment for the ribs. Although Dr. B assessed zero percent impairment for the cervical spine, he rated only a cervical sprain/strain.

As previously noted, the hearing officer's determination that the compensable injury of _____, includes a disc herniation at C4-5, is not appealed and has become final.¹ Clearly the designated doctor did not rate the entire compensable injury, as found by the hearing officer, because the designated doctor only opined that the claimant had a cervical sprain/strain. The designated doctor's report that the claimant reached MMI on March 12, 2009, with a five percent IR cannot be adopted because the designated doctor did not rate the entire compensable injury (i.e. a cervical disc herniation at C4-5 as determined by the hearing officer). We reverse the hearing officer's determination that the claimant reached MMI on March 12, 2009, with a five percent IR and remand the case for further action.

REMAND INSTRUCTIONS

Dr. B is the designated doctor in this case. On remand, the hearing officer is to determine if Dr. B is still qualified and available to be the designated doctor and if so, the hearing officer is to advise the designated doctor that it has been administratively determined that the compensable injury includes a disc herniation at C4-5. The designated doctor is then to be requested to give an opinion on MMI and IR of the entire compensable injury. If Dr. B is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 28 TEX. ADMIN. CODE § 126.7(h) (Rule 126.7(h)) to determine MMI and IR for the compensable injury. The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response and are to be allowed an opportunity to respond.

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 Texas Department of Insurance, Division of Workers' Compensation, 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. See Appeals Panel Decision 060721, decided June 12, 2006.

¹ We note that the hearing officer's finding that the designated doctor's opinion of a cervical sprain/strain is not contrary to the other medical evidence is inconsistent with the hearing officer's unappealed determination that the compensable injury includes a disc herniation at C4-5.

The true corporate name of the insurance carrier is **AIG CASUALTY 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge