

APPEAL NO. 100664
FILED JULY 27, 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 (CCH) was held on February 3, 2010, with the record closing on April 28, 2010. At the CCH on February 3, 2010, the respondent (claimant) did not appear, and the hearing officer issued a 10-day show cause letter to the claimant. The claimant responded to the 10-day letter requesting an opportunity to present her case at a reset hearing. A CCH was held on April 28, 2010, however the claimant did not appear for that hearing either.

The issues before the hearing officer were:

- (1) Did the claimant have disability resulting from an injury sustained on _____, for the period of July 31 through November 24, 2008?
- (2) Has the claimant reached maximum medical improvement (MMI) and, if so, on what date?
- (3) What is the impairment rating (IR)?

The hearing officer determined that the claimant had disability resulting from an injury sustained on _____, for the period of August 1 through November 23, 2008; the claimant reached MMI on November 24, 2008; and the claimant's IR is 16%. The appellant (self-insured) appealed the hearing officer's disability, MMI and IR determinations. Specifically, the self-insured argues that the designated doctor's certification of MMI/IR cannot be adopted because the Report of Medical Evaluation (DWC-69) and narrative report does not document clinical findings or measurements for impairment for loss of grip strength and the claimant's IR was not properly rated. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and remanded in part.

It is undisputed that the claimant, an assembly worker, sustained a left hand injury at work on _____, and that she underwent a surgical repair to her ulnar and radial collateral ligaments to her left ring and small fingers on September 24, 2008. The claimant's treating doctor, (Dr. I), examined the claimant on November 17, 2008, and certified that the claimant reached MMI on that same date with a 2% IR. The designated doctor, (Dr. J), examined the claimant on December 1, 2008, and certified that the claimant reached MMI on November 24, 2008, with a 16% IR.

DISABILITY

The hearing officer's decision that the claimant had disability resulting from an injury sustained on _____, for the period of August 1 through November 23, 2008, is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the claimant reached MMI on November 24, 2008, is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (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. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The designated doctor, Dr. J, assessed a 16% IR based on a 7% impairment for loss of range of motion (ROM) for the left hand and 20% impairment for loss of grip strength for the left hand, for a combined upper extremity value of 26%, converted to 16% whole person impairment per Table 3, page 20, using 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). In his narrative report dated December 1, 2008, Dr. J states that:

[ROM] is documented on the attached sheet; briefly, examination shows deficits of [distal interphalangeal (DIP)] flexion at the index, middle, ring, and small fingers and deficits of flexion of the [proximal interphalangeal (PIP)] at the index, ring, and small fingers. Additionally, the injured hand shows diminished grip strength She has a grip strength deficit of 56 percent strength loss index of her left injured hand as compared to her uninjured right hand.

However, the measurements for ROM or loss of grip strength for the left hand were not attached to the designated doctor's report or DWC-69 in evidence, as stated by Dr. J in his narrative report dated December 1, 2008. Rule 130.1(c)(3) provides in pertinent part that the doctor assigning the IR shall:

- (A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;
- (B) document specific laboratory or clinical findings of an impairment;
- (C) analyze specific clinical and laboratory findings of an impairment;
- (D) compare the results of the analysis with the impairment criteria and provide the following:
 - (i) a description and explanation of specific clinical findings related to each impairment, including zero percent (0%) [IRs]; and
 - (ii) a description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.
- (E) assign one whole body [IR] for the current compensable injury.

In Appeals Panel Decision (APD) 100394, decided June 3, 2010, the Appeals Panel stated that “[w]e read Rule 130.1(c)(3)(D)(i) requiring a description and explanation of specific clinical findings related to each impairment to include ROM measurements, where applicable, in determining the impairment.” In that case, the certifying doctor failed to document in his physical examination any measured ROM, or otherwise explain how he determined “normal” ROM at the wrist and hand, therefore, that doctor’s IR could not be adopted.

In the instant case, Dr. J’s IR cannot be adopted because the worksheets that identify, document, and analyze specific clinical and laboratory findings for ROM and loss of grip strength impairments for the compensable injury referenced as attached to Dr. J’s narrative report dated December 1, 2008, were not in evidence. Accordingly, we reverse the hearing officer’s determination that the claimant’s IR is 16% because the designated doctor’s assigned IR does not meet the requirements under Rule 130.1(c)(3). Review of the record shows that there is only one other certification of MMI/IR from the treating doctor, Dr. I, certifying that the claimant reached MMI on November 17, 2008, with a 2% IR. However, Dr. I’s certification cannot be adopted because his certification of MMI is different from the affirmed MMI date of November 24, 2008. Since there is no other certification of MMI/IR in evidence that can be adopted with an MMI date of November 24, 2008, we remand the case to the hearing officer.

REMAND INSTRUCTIONS

The designated doctor in this case is Dr. J. On remand, the hearing officer is to determine whether Dr. J is still qualified and available to be the designated doctor, and if

so, request that Dr. J rate only the compensable injury in accordance with the AMA Guides based on the claimant's condition as of the November 24, 2008, date of MMI considering the medical record, the certifying examination and the rating criteria in the AMA Guides and legibly document the clinical findings. The hearing officer is to provide the letter of clarification and the designated doctor's response to the parties and allow the parties an opportunity to respond and then make a determination regarding the IR. If Dr. J is no longer qualified and available to serve as the designated doctor then another designated doctor is to be appointed pursuant to Rule 126.7(h) to determine the claimant's IR.

SUMMARY

We affirm the hearing officer's determination that the claimant had disability resulting from an injury sustained on _____, for the period of August 1 through November 23, 2008. We affirm the hearing officer's determination that the claimant reached MMI on November 24, 2008.

We reverse the hearing officer's determination that the claimant's IR is 16% and we remand the IR issue to the hearing officer.

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 Division, 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge