APPEAL NO. 110614
FILED JULY 6, 2011

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 April 4, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) impairment rating (IR) is 12% and that the Texas Department of Insurance, Division of Workers' Compensation (Division) should not contact the designated doctor, Dr. L, to resolve the maximum medical improvement (MMI) and IR issues regarding the designated doctor's report dated September 30, 2010, pursuant to 28 TEX. ADMIN. CODE § 127.20(a) and (c) (Rule 127.20(a) and (c)).

The appellant (carrier) appealed, disputing both the determination that the claimant's IR is 12% and that the Division should not contact the designated doctor to resolve the MMI and IR issues regarding the designated doctor's report dated September 30, 2010, pursuant to Rule 127.20(a) and (c). The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Reversed and remanded.

The parties stipulated that: (1) the claimant sustained a compensable injury on _____; (2) the claimant reached MMI on the statutory MMI date of August 23, 2010; (3) the Division selected designated doctor, Dr. L, certified that the claimant reached MMI on August 23, 2010, and assigned a 5% IR; and (4) the referral doctor acting in place of the treating doctor, Dr. H, certified that the claimant reached MMI on August 23, 2010, and assigned a 12% IR. The evidence reflects that both Dr. H and Dr. L considered reflex sympathetic dystrophy (RSD) in assessing the claimant's impairment.

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.

Rule 130.1(c)(3) provides in pertinent part that the assignment of an IR shall be based on the injured worker's condition as of the MMI date considering the medical record and the certifying examination and 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 [0%] [IRs]; and

(ii) A description of how the findings relate to and compare with the criteria described in the applicable chapter 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)]. The doctor's inability to obtain required measurements must be explained.

The hearing officer found that the preponderance of the evidence is contrary to Dr. L's assignment of a 5% IR and the 12% IR certified by Dr. H is supported by a preponderance of the evidence. Dr. H examined the claimant on February 3, 2011. Dr. H assessed a 12% IR using the AMA Guides. Dr. H assessed 11% lower extremity impairment for loss of range of motion (ROM) of the claimant's right ankle and 21% lower extremity impairment for the peripheral nerve system (14% impairment for sensory and 8% impairment for motor). Although Dr. H included his ROM measurements in his narrative to establish how he arrived at his assessment for loss of ROM, he did not include any information in his narrative report to describe in detail his assessment of impairment for the claimant's peripheral nerve system.

The AMA Guides on page 3/89 provide that when RSD occurs in the lower extremity it should be evaluated as for the upper extremity as described in Section 3.1k on page 3/56 of the AMA Guides.

The last part of Section 3.1k, which is on page 56, is entitled "Causalgia and [RSD]" and provides as follows:

Causalgia and [RSD]

Causalgia is a term that describes the constant and intense burning pain usually seen with [RSD] when the causative lesion involves injury to a nerve.

The term "major causalgia" designates an extremely serious form of RSD produced by an injury to a major mixed nerve, usually in the proximal portion of the extremity. The term "minor causalgia" designates a more

> common form of RSD produced by an injury to the distal part of the extremity involving a purely sensory branch of a nerve.
>
> Other forms of RSD not associated with injury of a peripheral nerve include minor traumatic dystrophy, shoulder-hand syndrome, and major traumatic dystrophy.
>
> The four cardinal signs and symptoms of RSD are pain, swelling, stiffness, and discoloration. The diagnosis of RSD may be supported with a three-phase nucleotide flow study, cold stress testing, recurrence of pain after previously successful stellate ganglion blocks, in which case Horner's syndrome must be present, or Bier blocks.

The impairment secondary to causalgia and RSD is derived as follows:

> 1. Rate the upper extremity impairment due to loss of motion of each joint involved (Sections 3.1f through 3.1j).
>
> 2. Rate the sensory deficit or pain impairment according to instructions in this section and Table 11a (p. 48).
>
> 3. Rate the motor deficit impairment of the injured peripheral nerve, if it applies (Table 12a, p. 49).
>
> 4. The appropriate impairment percents for loss of motion, pain or sensory deficits, and motor deficits if present are *combined* using the Combined Values Chart (p. 322) to determine the upper extremity impairment. Major causalgia may result in a complete loss of function and an impairment of the extremity as great as 100%.

Although Dr. H appears to have used the correct components (ROM, motor, and sensory impairments) when assessing his IR, his narrative report failed to identify the specific peripheral nerve involved and failed to identify the severity or grade of sensory and motor deficit he relied on in assessing his impairment. Therefore, his certification of IR cannot be adopted. *See* Appeals Panel Decision (APD) 100394, decided June 3, 2010. The hearing officer's determination that the claimant's IR is 12% is reversed.

The only other certification in evidence is from the designated doctor, Dr. L. Dr. L examined the claimant on September 30, 2010, and certified that the claimant reached MMI on August 23, 2010, with a 5% IR. No worksheets were attached to Dr. L's narrative. Dr. L noted that "[o]n exam today, there is some discoloration of the right ankle area. [Claimant] is reluctant to move her ankle and guards and resist[s] at any attempt at [ROM] of the ankle. There is no significant swelling about the ankle." Further, Dr. L noted that the claimant had been diagnosed as having RSD. Dr. L did not explain how he applied the rating criteria in the AMA Guides in assigning a 5% IR and it

is unclear from his narrative report the basis of the 5% IR. Therefore, the 5% IR is not supported by the evidence and cannot be adopted.

The hearing officer determined that the Division should not contact Dr. L to resolve the MMI and IR issues regarding his report dated September 30, 2010. However, since the hearing officer's determination that the claimant's IR is 12% has been reversed and there is no other IR in evidence that can be adopted, we remand the IR issue to the hearing officer and reverse the hearing officer's determination that the Division should not contact Dr. L to resolve the MMI and IR issues regarding his report dated September 30, 2010. We render a new decision that the Division should contact Dr. L to resolve the MMI and IR issues regarding his report dated September 30, 2010.

The designated doctor in this case is Dr. L. The hearing officer is to determine whether Dr. L is still qualified and available to be the designated doctor, and if so, request that Dr. L rate the compensable injury in accordance with the rating criteria in the AMA Guides based on the claimant's condition as of the stipulated date of MMI of August 23, 2010. The hearing officer should inform the designated doctor of the requirement that the 5% IR be explained in accordance with Rule 130.1(c)(3) and the AMA Guides or the designated doctor may assess a new IR based on the claimant's condition as of the date of MMI, August 23, 2010, considering the medical record, the certifying examination, and the rating criteria in the AMA Guides and providing an explanation of the new rating in accordance with Rule 130.1(c)(3). The hearing officer is to provide 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. L is no longer qualified and available to serve as the designated doctor then another designated doctor is to be appointed to determine the claimant's IR pursuant to Rule 127.5(c).

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 **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Cynthia A. Brown
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge