

APPEAL NO. 120245
FILED APRIL 27, 2012

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case returns following our remand in Appeals Panel Decision (APD) 111187, decided October 28, 2011, for the hearing officer to reconstruct the record. A contested case hearing on remand was held on January 13, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer issued a decision on remand determining that: (1) the compensable injury of [date of injury], extends to adjustment disorder with mixed anxiety and depressed mood and chronic pain disorder associated with psychological factors; and (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from [Dr. A] on June 8, 2007, became final under Section 408.123.

The appellant/cross-respondent (carrier) appealed the hearing officer's determination on extent of injury, contending insufficient expert evidence of causation. The appeal file does not contain a response to the carrier's appeal. The respondent/cross-appellant (claimant) cross-appealed the hearing officer's determination on finality because of an exception to Section 408.123. The carrier responded to the claimant's cross-appeal, urging affirmance for the finality issue.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) the claimant sustained a compensable injury to at least her left shoulder and clavicle on [date of injury]; (2) Dr. A was the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor to address MMI and IR; (3) [Dr. W] was the Division-appointed designated doctor to address extent of the claimant's compensable injury; and (4) [Dr. J] was the Division-appointed designated doctor to address MMI, IR, and extent of the compensable injury. The order of appointment of the designated doctors was Dr. A, then Dr. W, then Dr. J. The claimant testified that she was injured at work when boxes fell from a dolly, hitting the left side of her body. The evidence reflects that the claimant has been diagnosed with a fractured clavicle with nonunion, chronic pain disorder associated with psychological factors, and adjustment disorder with mixed anxiety and depressed mood. The evidence reflects that the claimant had left shoulder surgery on March 26, 2008.

EXTENT OF INJURY

The hearing officer's determinations that the compensable injury of [date of injury], extends to adjustment disorder with mixed anxiety and depressed mood and chronic pain disorder associated with psychological factors is supported by sufficient evidence and is affirmed.

FINALITY UNDER SECTION 408.123

Section 408.123(e) provides that except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Section 408.123(f) provides in pertinent part that an employee's first certification of MMI or assignment of an IR may be disputed after the period described in Subsection (e) if: (1) compelling medical evidence exists of: (A) a significant error by the certifying doctor in calculating the IR.

The hearing officer's findings of fact that Dr. A's assigned IR was a valid rating; that Dr. A's IR was provided to the claimant by verifiable means on June 20, 2007; and that the claimant did not dispute Dr. A's IR within 90 days after the date the rating was provided are supported by sufficient evidence.

Dr. A examined the claimant on June 7, 2007, for the purposes for determining MMI and IR and certified that the claimant reached MMI on June 7, 2007, with 2% IR, based on abnormal range of motion of the left shoulder.

The cases make clear that the failure to rate the entire compensable injury constitutes compelling medical evidence of a significant error by the certifying doctor in calculating the IR. See Section 408.123(f)(1)(A), APD 111227, decided October 13, 2011.

In this case, based on his narrative report dated June 7, 2007, which is in evidence, Dr. A did not rate the claimed extent-of-injury diagnoses, did not mention the claimed extent-of-injury diagnoses, and his diagnosis did not include the claimed extent-of-injury diagnoses, adjustment disorder with mixed anxiety and depressed mood and chronic pain disorder associated with psychological factors. We hold that since Dr. A did not rate an adjustment disorder with mixed anxiety and depressed mood and chronic pain disorder associated with psychological factors, which has been found to be part of the compensable injury, the failure to do so is an exception to finality under Section 408.123(f)(1)(A).

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer’s determination that the first certification of MMI and assigned IR from Dr. A on June 8, 2007, became final under Section 408.123 is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

We reverse the hearing officer’s determination that the first certification of MMI and IR assigned by Dr. A on June 8, 2007, became final pursuant to Section 408.123 and we render a new decision that the first certification of MMI and IR assigned by Dr. A on June 8, 2007, did not become final pursuant to Section 408.123.

SUMMARY

We affirm the hearing officer’s determination that the compensable injury of [date of injury], extends to adjustment disorder with mixed anxiety and depressed mood and chronic pain disorder associated with psychological factors.

We reverse the hearing officer’s determination that the first certification of MMI and assigned IR from Dr. A on June 8, 2007, became final under Section 408.123 and render a new decision that the first certification of MMI and assigned IR from Dr. A on June 8, 2007, did not become final under Section 408.123.

The true corporate name of the insurance carrier is **SERVICE LLOYD'S INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge