APPEAL NO. 120640
FILED MAY 29, 2012

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 March 7, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [date of injury], compensable injury extends to a left knee sprain/strain; (2) the [date of injury], compensable injury does not extend to an aggravation of the hallux valgus at the first MTP joint and a left foot sprain/strain; (3) the appellant (claimant) reached maximum medical improvement (MMI) on December 12, 2011; and (4) the claimant's impairment rating (IR) is two percent. The claimant appealed, disputing the hearing officer's determination that the compensable injury does not extend to an aggravation of the hallux valgus at the first MTP joint and a left foot sprain/strain, and the determinations of MMI and IR. The respondent (self-insured) responded, urging affirmance of the disputed determinations.

The hearing officer's determination that the compensable injury extends to a left knee sprain/strain was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]; the compensable injury extends to a microtrabecular fracture with the distal shaft and first metatarsal head; and that [Dr. D] was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address MMI and IR. The claimant testified that she was injured when she tripped and fell.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to aggravation of the hallux valgus at the first MTP joint and a left foot sprain/strain is supported by sufficient evidence and is affirmed.

MMI AND IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." 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. D examined the claimant on December 12, 2011, certifying that the claimant reached MMI on December 12, 2011, with a two percent IR, 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). Dr. D gave the following three impressions in his narrative report: (1) [n]ondisplaced left first metatarsal head fracture from a work-related fall; (2) [t]raumatic arthropathy of the left foot first metatarsophalangeal joint; and (3) [l]eft knee strain, now resolved. Dr. D noted that there is no further need for any formal medical treatment including invasive injections, continued physical therapy or orthotic devices. Dr. D further noted that the claimant should continue to use her custom orthotics on an indefinite basis as well as perform a self-directed exercise program at home that would include range of motion and strengthening exercises. We note that traumatic arthropathy of the left foot first metatarsophalangeal joint was not an issue at the CCH.

Dr. D assessed two percent impairment, using Table 62, page 3/83 of the AMA Guides. Table 62 specifies impairments for arthritis impairments based on roentgenographically determined cartilage intervals. Dr. D's narrative referenced x-rays that showed adequate healing of her left first metatarsophalangeal joint fracture but did not provide measurements of the cartilage intervals based on x-rays.

28 TEX. ADMIN. CODE § 130.1(c)(3) (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 records 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 zero percent [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.

As previously noted, Dr. D did not document any specific clinical findings of cartilage intervals as determined by x-rays. Rule 130.1(c)(3) specifically requires that clinical findings of permanent impairment for the current compensable injury be identified and documented as well as a description of how the findings relate to and compare with the criteria being applied in the AMA Guides. Without the specific findings of cartilage intervals documented, it is not possible to determine if Table 62 was applied correctly. For the above reasons, Dr. D's certification cannot be adopted. We note that Table 64, page 3/85 of the AMA Guides "Impairment Estimates for Certain Lower extremity Impairments" provides assessment of impairment in certain circumstances. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on December 12, 2011, with a two percent IR.

One other certification is in evidence from [Dr. F], a doctor selected by the treating doctor to act in place of the treating doctor. Dr. F examined the claimant on January 25, 2012, and certified that the claimant had not yet reached MMI. However, Dr. F opined that the claimant was not at MMI because of a surgery recommended for the hallux valgus deformity. As previously noted, the hearing officer's determination that the compensable injury does not extend to an aggravation of the hallux valgus at the first MTP joint has been affirmed. Therefore, the certification from Dr. F cannot be adopted.

No other certification of MMI/IR is in evidence. Therefore, we remand the MMI/IR issues to the hearing officer for further consideration and action consistent with this decision.

REMAND INSTRUCTIONS

Dr. D is the designated doctor. On remand the hearing officer is to determine whether Dr. D is still qualified and available to be the designated doctor. If Dr. D is no longer qualified or available, then another designated doctor is to be appointed pursuant to Rule 127.5(c) to determine MMI and the IR. The hearing officer is to advise the designated doctor that the compensable injury extends to a left knee sprain/strain and a microtrabecular fracture with the distal shaft and first metatarsal head but does not extend to aggravation of the hallux valgus at the first MTP joint or to a left foot sprain/strain. The designated doctor is to certify MMI and rate the compensable injury

in accordance with Rule 130.1(c)(3) based on the claimant's condition as of the MMI date considering the medical records, the certifying examination and rating criteria in the AMA Guides.

The parties are to be provided with the hearing officer's letter and the designated doctor's response. The parties are to be allowed 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 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* Appeals Panel Decision 060721, decided June 12, 2006.

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

[ATTORNEYS AND COUNSELORS]
[ADDRESS]
[CITY], TEXAS [ZIP CODE].

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge