

APPEAL NO. 120672  
FILED MAY 21, 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 was opened on August 24, 2011, continued on October 20, 2011, and December 12, 2011, and was concluded on February 8, 2012, with the record closing on March 5, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to "in the right wrist:" sprain/strain, carpal tunnel syndrome (CTS), ulnar nerve compression, and reflex sympathetic dystrophy (RSD)/causalgia; (2) the compensable injury of [date of injury], does not extend to "in the right wrist:" mass on the dorsoradial aspect, tenosynovitis, de Quervain's syndrome, synovitis, fibrosis surrounding tendons of right thumb, or scaphoid lunate advanced collapse (SLAC)/scaphoid disassociation; (3) the appellant (claimant) reached maximum medical improvement (MMI) on August 25, 2009; and (4) the claimant's impairment rating (IR) is 0%.

The claimant appealed, disputing that portion of the hearing officer's determination of the extent-of-injury conditions determined not to be part of the compensable injury and the hearing officer's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed determinations.

That portion of the hearing officer's determination that the compensable injury of [date of injury], extends to "in the right wrist:" sprain/strain, CTS, ulnar nerve compression, and RSD/causalgia 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 on [date of injury], the claimant sustained a compensable injury; the claimant's date of statutory MMI is August 25, 2009; [Dr. R] is the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) with presumptive weight on the issues of MMI, IR, and extent of injury; and the compensable injury of [date of injury], extends to a right wrist sprain.

## EXTENT OF INJURY

The hearing officer's determination that the compensable injury does not extend to "in the right wrist:" mass on the dorsoradial aspect, tenosynovitis, de Quervain's

syndrome, synovitis, fibrosis surrounding tendons of right thumb, or (SLAC)/scaphoid disassociation is supported by sufficient evidence and is affirmed.

### **MMI**

The hearing officer's determination that the claimant reached MMI on August 25, 2009, 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 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.

After he determined the extent of the compensable injury, the hearing officer in a letter of clarification dated December 13, 2011, requested that Dr. R discuss and rate each component of the compensable injury: right wrist sprain/strain, CTS, ulnar nerve compression, and RSD/causalgia. Dr. R responded in a narrative report, dated December 16, 2011. In that report, Dr. R noted that he based his assessment of the claimant's impairment in part, on examination findings from [Dr. N], taken on August 25, 2009, and explained his assessment of impairment for each condition listed by the hearing officer to be part of the compensable injury. Dr. R stated there would be no residual permanent impairment for the diagnosis of wrist sprain/strain. Dr. R stated that for CTS based on the findings of Dr. N on the statutory date of MMI, there would not be any ratable impairment for any neurological deficits as there is no clinical documentation to support impairment from this aspect 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). Further, Dr. R stated that for the diagnosis of ulnar nerve compression there would not be any ratable impairment for neurological deficit as there is no clinical documentation to support impairment based on Dr. N's findings from August 25, 2009. Finally, Dr. R stated that for the diagnosis of RSD/causalgia there was no clinical documentation to support impairment for sensory or motor deficit in the upper extremities based on Dr. N's findings from August 25, 2009, therefore, the impairment for RSD/causalgia would be based on any impairment for range of motion (ROM) loss. Dr. R stated in his report the specific ROM findings documented by Dr. N on August 25, 2009, and assessed a right upper extremity impairment of 12% which he then converted to 7% whole person impairment. Dr. R then provide a Report of Medical Evaluation (DWC-69) for each diagnosis separately and then one DWC-69 for the entire

compensable injury. However, all of the DWC-69s attached to the December 16, 2011, narrative contained an MMI date of August 15, 2009, rather than the correct statutory MMI date of August 25, 2009.

Subsequently, a DWC-69 was received from Dr. R with a date of MMI on August 25, 2009, with 0% impairment. However, there is only one diagnosis code listed in that certification and it does not contain an explanation of why Dr. R would have changed his assessment of impairment from 7% to 0%, when considering all of the conditions found to be part of the claimant's compensable injury. The hearing officer noted that there was no other certification that rated the compensable injury.

The narrative report of December 16, 2011, specifically explains the amount of impairment assessed by Dr. R for each condition found by the hearing officer to be part of the compensable injury. As previously noted, the hearing officer's extent-of-injury finding has been affirmed. Dr. R's December 16, 2011, narrative specifically provided that he assessed 7% IR for the claimant's RSD/causalgia based on documented ROM findings taken by Dr. N on the date of statutory MMI.

The hearing officer specifically found that in a report dated December 16, 2011, Dr. R certified the claimant reached MMI on the statutory date of August 25, 2009, with a 0% IR and that this certification is not contrary to the preponderance of the evidence. However, the record reflects that the narrative report written by Dr. R assessed a 7% impairment for the compensable injury not 0%. The DWC-69 subsequently sent in by Dr. R and adopted by the hearing officer did not contain any explanation for the change in the impairment assessed from 7% to 0%. The DWC-69 that was subsequently sent in with the 0% IR contained only one diagnosis code in the medical status information portion of the DWC-69.

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 claimant had an IR of 0% is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The narrative from Dr. R dated December 16, 2011, specifically assessed a 7% IR for the claimant's RSD/causalgia which is part of the claimant's compensable injury. However, inexplicably the designated doctor subsequently submitted a DWC-69, containing a single diagnosis code which certified the claimant reached MMI on August 25, 2009, with a 0%. There are no other certifications of IR in evidence with the affirmed date of MMI, August 25, 2009, which can be adopted.

Accordingly, we reverse the hearing officer's determination that the claimant's IR is 0% and remand the IR issue to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. R is the designated doctor. On remand the hearing officer is to determine whether Dr. R is still qualified and available to be the designated doctor, and if so, request that Dr. R rate the entire compensable injury (right wrist sprain/strain, CTS, ulnar nerve compression, and RSD/causalgia) in accordance with the AMA Guides based on the claimant's condition as of the MMI date, August 25, 2009, considering the medical record, the certifying examination and the rating criteria in the AMA Guides.

The hearing officer is to provide the designated doctor's report to the parties, allow the parties an opportunity to respond and to present further evidence, and then determine the claimant's IR consistent with this opinion.

If Dr. R is no longer qualified or available or refuses to rate the compensable injury as accepted, as well as administratively determined, in accordance with AMA Guides criteria, then another designated doctor is to be appointed to determine the claimant's IR. If a new designated doctor is appointed he or she is to be advised that the date of MMI is August 25, 2009, and that the doctor is to rate the entire compensable injury as previously noted according to the AMA Guides as of the date of MMI. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)). The parties are to be advised of the designated doctor's appointment and to be allowed to comment and present evidence regarding the designated doctor's report.

### **SUMMARY**

We affirm the hearing officer's determination that the compensable injury does not extend to in the right wrist: mass on the dorsoradial aspect, tenosynovitis, de Quervain's syndrome, synovitis, fibrosis surrounding tendons of right thumb, or (SLAC)/scaphoid disassociation.

We affirm the hearing officer's determination that the claimant reached MMI on August 25, 2009.

We reverse the hearing officer's determination that the claimant's IR is 0% and remand the IR issue to the hearing officer for further action consistent with this decision.

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 **LIBERTY INSURANCE CORPORATION** 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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge

